

In order to be in compliance with the Kansas Open Meetings Act, City Attorney Larry Schwartz recommends the following motion be stated when the City Commission requests an executive session:

### **Motion**

"I move that the governing body recess into executive session to discuss an overview of the Niles Lawsuit, pursuant to K.S.A. 75-4319(b)(2) for consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. The open meeting will resume in the commission chambers at [INSERT] p.m."

### **State Reference**

**75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure.**

- (a) Upon formal motion made, seconded and carried, all public bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include: (1) A statement describing the subjects to be discussed during the closed or executive meeting; (2) the justification listed in subsection (b) for closing the meeting; and (3) the time and place at which the open meeting shall resume. The complete motion shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.
- (b) Justifications for recess to a closed or executive meeting may only include the following, the need:
- (1) to discuss personnel matters of nonelected personnel;
  - (2) for consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
  - (3) to discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
  - (4) to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
  - (5) to discuss matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
  - (6) for the preliminary discussion of the acquisition of real property;
  - (7) to discuss matters relating to pari-mutuel racing permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;
  - (8) to discuss matters relating to the care of children permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 38-2212(d)(1) or 38-2213(e), and amendments thereto;
  - (9) to discuss matters relating to the investigation of child deaths permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 22a-243(j), and amendments thereto;
  - (10) to discuss matters relating to patients and providers permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 39-7,119(g), and amendments thereto;
  - (11) to discuss matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;
  - (12) to discuss matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems,

facilities, or equipment used in the production, transmission, or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities, or equipment; (C) a public body or agency, public building or facility, or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion, or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

- (13) to discuss matters relating to maternity centers and child care facilities permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 65-525(d), and amendments thereto;
- (14) to discuss matters relating to the office of inspector general permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 75-7427, and amendments thereto; and
- (15) for the governor's domestic violence fatality review board to conduct case reviews.

**(c)** No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

**(d)** Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(12), shall not be subject to subpoena, discovery, or other demand in any administrative, criminal or civil action.