

KOMA Guidelines for Hearing Panels

1. It is essential that panel members, especially presiding officers, make themselves familiar with the operating requirements of the Kansas Open Meetings Act (KOMA). The panel's legal counsel will also be available to assist with KOMA compliance.

See <http://www.k-state.edu/academicpersonnel/univcomm/komag.html>.

2. Under the Kansas Open Meetings Act, the panel may recess its open meetings for closed or executive sessions for purposes of discussing certain topics and those topics only. The subjects that may be handled in an executive session include personnel matters of non-elected personnel (like faculty and unclassified professionals) and consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. Only members of the panel and their attorney may be present during an executive session for purposes of consultation with the panel's attorney.

3. The grievant decides whether the panel will hear the evidence in closed or open session. Deliberations are always in closed session. The announcement of the decision must be in open session.

4. The Kansas Open Meetings Act is very precise in laying out the procedure that a body must follow in recessing into an executive session. K.S.A. 75-4319 provides as follows:

Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting, and (3) the time and place at which the open meeting shall resume.

Such a motion would therefore read somewhat as follows:

I move that the committee recess for an executive meeting to discuss (fill in the particular matter to be discussed that falls under the statute, in this case: "personnel matters of non-elected personnel") in order to protect (fill in the justification, in this case: "the privacy of the personnel involved"). The meeting will resume at (fill in time and place).

-or-

I move that the committee recess for an executive meeting to seek and receive legal advice by consulting with the panel's attorney in order to protect the attorney-client privilege. The meeting will resume at (fill in time and place).

The motion must be seconded and carried in order to go into executive or closed session.

Note: If the hearing is a closed hearing (where the committee went into executive session at the beginning of the hearing), the panel does not need to make another motion to (further) close the

hearing for the purposes of deliberating. The panel should just excuse everyone but the panel members and the panel's attorney so that the panel can deliberate. Any person who aids the panel in its discussion may also be discretionarily admitted to an executive session. However, the attorney-client privilege will be destroyed if anyone other than the attorney and the client(s) are present.

5. It is important that the discussion during the executive meeting be limited exclusively to the topic stated in the motion. Non-committee members may be present if necessary to the discussion in executive session.

6. If during an executive session the time for resumption does not allow completion of the desired discussion, it is necessary to resume the open meeting and move to extend the executive session for the same reasons, indicating again the time and place of resumption.

7. The KOMA also requires that the full motion be recorded in the minutes of the meeting and maintained as a part of the permanent records of the committee.

No Secret Ballots

8. The panel may not take action by secret ballot. Voting is not required. However, if a vote is taken, it must be done in open session. If voting is not used to arrive at a decision, but rather a decision is reached by agreement and consensus, then resumption of the open session is not necessary until the announcement of the consensus decision.