

PUTTING SPIRIT INTO WORDS WORTH DISCUSSING

***PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE
AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.***

The Topeka Capital-Journal Editorial Board (Feb. 16, 2008) -- In a perfect world, there would be no need for proposals like the one introduced by Sen. Tim Huelskamp to clarify the Kansas Open Meetings Act.

But an action by some members of the Topeka City Council -- an imperfect group if ever there was one -- provides ample reason why Huelskamp's bill deserves consideration.

The proposal by Huelskamp, a Republican from Fowler, would prohibit members of governing bodies from engaging in "serial communications."

That term has become part of the Topeka lexicon since last December, when the city council made its end run around Mayor Bill Bunten's veto of the purchase of a backup police helicopter.

To recap, the open meetings flap came to light after five members of the council voted in favor of another type of a "communication" -- this one a governing body procedure -- to approve the helicopter purchase.

Later, it was revealed Deputy Mayor Brett Blackburn had contacted four members of the council -- Jack Woelfel, Jeff Preisner, Deborah Swank and Lana Kennedy -- by phone to seek their support of the "communication." Some other members of the governing body hadn't been made aware of the action.

And who were the five who voted for the "communication"? Blackburn, Woelfel, Preisner, Swank and Kennedy.

Enter Shawnee County District Attorney Robert Hecht, who investigated the discussions between the five council members.

Hecht determined there was no violation of the law. However, he ruled Blackburn may have violated the spirit of the law in contacting his four fellow council members.

And that's where Huelskamp has stepped in.

With help from Mike Kautsch, a professor of media law at The University of Kansas, Huelskamp drafted a bill aimed at barring individual communications

"that collectively involve a majority of a quorum and that share a common topic of discussion."

Kautsch summed up the need for the bill this way: "One should not be using the exception for meetings of fewer than a majority of a quorum to generate a consensus on a single issue that ought to be discussed before the public."

We couldn't agree more.

Blackburn also welcomed the proposal, saying he believed any clarification in the open meetings law is a good thing.

There's definitely a fine point to be determined here. In ruling the "communication" caper wasn't a violation of the law, Hecht cited prior court rulings saying serial communications had to be interactive -- in other words, that each person Blackburn called had to understand they were part of the majority of a quorum.

The four council members who spoke with Blackburn contended Blackburn had asked only about their support of the "communication." They said Blackburn didn't mention others to whom he was talking about the issue.

What the issue proved, though, is that there is wiggle room in the open meetings law.

Here's wishing Huelskamp the best of luck in tightening the rules.

***Do you have an Open Government experience to share?
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