

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
300 S.W. TENTH AVENUE
TOPEKA, KS 66612
(785) 296-6287
mark.samsel@house.ks.gov



DISTRICT ADDRESS
508 E. 4TH STREET
WELLSVILLE, KS 66092
(785) 418-4962
mark@marksamsel.org

MARK SAMSEL
5TH DISTRICT

April 27, 2020

Honorable Derek Schmidt
Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

RE: Request for Attorney General Opinion: Convening of the Legislature

Dear Attorney General Schmidt:

In the interest of time, I respectfully withdraw my request dated April 22, 2020 to your attention. It seems that the Legislature will be able to physically reconvene in some manner soon, so I narrow my request to those specific issues. I look forward to working with your office and others concerning the questions of virtual participation and voting at a later time. Thank you for your continued guidance and service to Kansas.

Background.

On March 12, 2020, a State of Disaster Emergency was proclaimed for the State of Kansas surrounding the declaration of a public health emergency stemming from COVID-19. The proclamation remains in effect today, along with a number of Executive Orders issued by the Governor. *See, e.g.*, EO 20-03, 20-07, 20-14, 20-15, 20-16, 20-18, 20-24, 20-25.

On March 19, 2020, the Legislature passed an adjournment resolution, Senate Concurrent Resolution (SCR) 1615. It provides, among other things, that “if the legislative coordinating council determines it is necessary to secure the health and safety of the public, legislative staff and legislators, the legislative coordinating council may reconvene the legislature before April 27, 2020, or may postpone the reconvening of the legislature past April 27, 2020, by a majority vote of five members of the legislative coordinating council, except that such postponement shall not be later than May 21, 2020.”

On April 22, 2020, the Legislative Coordinating Council (LCC), pursuant to SCR 1615, met and determined that it was necessary to postpone the reconvening of the Legislature past April 27, 2020—perhaps until May 6, 2020, or earlier or later—in order to secure the health and safety

of the public, legislative staff, and legislators. It is my understanding that the LCC retains discretion under SCR 1615 to reevaluate and determine whether the Legislature should reconvene at any point, dependent on securing “the health and safety of the public, legislative staff and legislators,” except that such adjournment shall not extend past May 21, 2020.

Thus, significant legal issues of paramount statewide interest concerning how the Legislature may convene (or reconvene) have arisen. These particularly concern the health and safety of legislative staff and legislators, the sole factor on which reconvening the Legislature turns. In light of this, modern technology, and circumstances which change day-to-day, your prompt consideration and opinion regarding the following questions would be beneficial for all Kansans.

May the Legislature convene outside of the Capitol building?

Article 2, Section 8 of the Kansas Constitution provides that “[t]he legislature shall meet in regular session . . . , and all sessions shall be held at the state capital.” Under Article 15, Section 8, the Kansas Constitution addresses the “Location of the *state capital*,” as follows:

The temporary seat of government is hereby located at the city of Topeka, county of Shawnee. The first legislature under this constitution shall provide by law for submitting the question of the permanent location of the *capital* to a popular vote, and a majority of all the votes cast at some general election shall be necessary for such location.

Emphases added.

Consequently, reading the Kansas Constitution as a whole, as well as its plain language, suggests that the reference to the “state capital” means Topeka, as opposed to perhaps Leavenworth or Wyandotte. It thus seems that the Legislature may convene outside of the Capitol building walls, and naturally, outside of their respective chambers, so long as the Legislature convenes within the city limits of Topeka. In light of present social distancing concerns, and with majorities of both chambers deemed “high risk” due to their age, it further seems that the Legislature could convene in a venue larger than the Capitol building, such as an arena or other large facility.

I understand that the first legislatures convened in other parts of Topeka, as no Capitol building existed, thus providing some historical context if true. This interpretation also appears logical. If, for instance, a fire or tornado destroyed the Capitol building, it would seem inconceivable that the Legislature could not convene in a different location, or that the people, through their Constitution, would ever intend such a result. The same logic appears to apply with equal force to COVID-19, which has been determined to prevent the safe gathering of the Legislature within the halls of the Capitol building. Of note, other legislative bodies have gathered in arenas or other large venues throughout the country.

Your opinion on these significant issues is respectfully requested.

Must a quorum be contemporaneously and physically present to pass a bill?

Article 2, Section 8 of the Kansas Constitution provides that “[a] majority of the members then elected (or appointed) and qualified of the house of representatives or the senate shall constitute a quorum of that house.” “A majority of the members then elected (or appointed) and qualified of each house, voting in the affirmative, shall be necessary to pass any bill.” Kan. Const., art. 2, § 13. “Two-thirds (2/3) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, shall be necessary to ratify any amendment to the Constitution of the United States or to make any application for congress to call a convention for proposing amendments to the Constitution of the United States.” *Id.*

The question has been raised as to whether a quorum must be physically present in the chamber/gallery/hallway (or other area, *e.g.* arena) to comport with our Constitution. In other words, whether at least 63 representatives or 21 senators must be gathered together contemporaneously to satisfy constitutional requirements.

Alternatively, if a quorum is readily present and able to participate within the building or confines *as a whole*, would that would pass constitutional muster? Under this latter scenario, for example, legislators could remain in their offices, outdoors, or on different floors of the Capitol, and observe proceedings virtually (via legislative online streaming), then appear in the chamber, individually or in smaller groups, to speak, ask questions, offer amendments, vote, or otherwise participate. This less restrictive approach seems to satisfy all constitutional requirements.

Your opinion and guidance on these matters would be most appreciated. Please contact me if I may be of assistance.

Very truly yours,



Mark Samsel
State Representative, District 5