



Taxpayers pay fine for KCC violation

D.A. found Kansas Open Records Act breach, but agency, not commissioners, foots bill



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Taylor

Taxpayers who were shut out of the utility rate-changing process will pay the small fine for the state agency that shut them out under the settlement of the Kansas Corporation Commis-



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sion's recent violation of the Kansas Open Meetings Act. The settlement reached be-

tween Shawnee County District Attorney Chad Taylor and the KCC stipulates that the \$500 penalty will come out of the agency budget and not the pockets of commissioners Mark Sievers, Thomas Wright and Shari Feist-Albrecht, who were named defendants in the

suit. Jesse Borjon, spokesman for the KCC, said via email that an "agency check" was issued Nov. 21.

The \$500 will go to the Shawnee County general fund, as prescribed by KOMA.

Taylor's office released a

statement downplaying the fine and saying the purpose of the suit was to end a closed-door consensus-building process known as "pink-sheeting" that predated the three commissioners.

KCC continues on 10A

KCC: Media attorney praises district attorney

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"At the outset of this case, the district attorney's office was taxed with trying to unravel and correct a long-term systemic problem within the KCC that was much bigger than any individual commissioner," Taylor said via email. "There was an immediate need for a cultural change that curbed the practice of doing business outside the public eye and ended the practice of 'pink sheeting.'"

Pink sheeting was the internal nickname for "non-rational voting" commissioners had used for years

to approve rate changes without a public hearing. A staff attorney would present draft orders to each commissioner individually, and if a majority approved it, it would take effect. The order that led to the KOMA complaint involved a rate hike for a small utility in Salina.

The settlement states that in that case Feist-Albrecht and Sievers also met to review and make minor alterations to the order without Wright present and without calling a public meeting compatible with KOMA.

But the settlement says Feist-Albrecht and Sievers "lacked the requisite intent"

to be fined individually.

Under KOMA as currently written, complainants must prove such intent to levy a fine.

KOMA also stipulates that fines are to be levied against "any member of a body or agency subject to this act," without mentioning fines against agencies as a whole.

"According to that statute any penalties have to be against the individual, not the agency, and I'm not quite sure how they finessed that," Topeka attorney Mike Merriam said. "I guess a settlement is a settlement and you can do

what you want to, but they still ended up using taxpayer funds to pay it."

Merriam specializes in First Amendment issues and works for news organizations, including The Topeka Capital-Journal.

Taylor said the \$500 fine was "a very small part of a larger mandate to the agency that the Kansas Open Meetings Act must be recognized and strictly followed."

"The agency as a whole was responsible for creating the problem," Taylor said. "The agency as a whole must be responsible for the settlement, including the fine,

which was fully approved by the district court."

Taylor said the lawsuit also forced the commissioners to do an internal review that will result in more openness.

That review acknowledged the illegality of pink sheeting but said commissioners may continue to deliberate behind closed doors when exercising "quasi-judicial" powers. That has raised concerns with the Citizens' Utility Ratepayer Board, the consumer advocacy group that blew the whistle on pink sheeting.

Merriam said Taylor de-

serves credit for being willing to take on KOMA issues like pink sheeting and a series of Cedar Crest dinners hosted by Gov. Sam Brownback in which Merriam said Taylor's office "really did do a very thorough investigation."

But Merriam said he doesn't understand why the \$500 penalty was levied against the KCC as a whole.

"They're just taking money out of one taxpayer fund and putting it in another," Merriam said. "That doesn't do anything to teach anybody a lesson. I know it's not a lot of money, but it's a puzzlement."