

FILE

Subject Schools - officer's
Boards of Education
Copy to State Board of
Education
Open Meeting Law



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 8, 1974

Opinion No. 74- 262

John W. Brand, Jr.
Stevens, Brand & Lungstrum
Suite 502
First National Bank Tower
Lawrence, Kansas 66044

Dear Mr. Brand:

As chief negotiator for Unified School District No. 497, you inquire concerning the application of the Kansas open meeting law, K.S.A. 75-4317 *et seq.*, to collective negotiations conducted pursuant to K.S.A. 72-5413 *et seq.*

As background, you advise that prior to the commencement of negotiations on December 1 of each year, the school board has designated a negotiating team. For the past four years you have been retained as chief negotiator. Two assistant superintendents have been designated as assistant negotiators. The superintendent of schools is an ex officio member of the negotiating team. The Lawrence Education Associate, an affiliate of the Kansas National Education Association, is the certified representative of the teachers, who select a negotiating team of nine members from among the membership. Under K.S.A. 72-5423, notices to negotiate on new items or to amend existing contracts are filed on or before December 1 of each year. Thereafter, the negotiating teams of the teachers and the Board meet to discuss requests on an item by item basis. If an agreement is reached, a document entitled "Tentative Agreement" is prepared for the signature of the two chief negotiators. It is assumed that these agreements are not binding until ratified pursuant to K.S.A. 72-5421, which provides thus:

"A board of education and a representative selected or designated pursuant to . . . sections 3 to 8 of this act may enter into an agreement covering terms and conditions of professional ser-

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by a majority of the members of the board of education and a majority of the members of the applicable negotiating unit."

At the end of the negotiating period, all tentative agreements are submitted to the board of education by the board team, and to the members of the teachers' negotiating unit by the teachers' term for ratification or rejection. It has been assumed, and correctly, that the open meeting law requires that the board meeting at which tentative agreements are considered for binding approval must be a public meeting. However, questions have arisen concerning application of the open meeting law to three separate stages of the negotiation process described in your letter, first, when the two negotiating teams are "at the negotiation table," secondly, when the individual teams are in caucus and discussing matters among themselves, away from the other team, and thirdly, when the team representing the board is meeting with the members of the board to discuss its team strategy and positions during negotiations.

K.S.A. 75-4317 enunciates a legislative policy in light of which the entire open meeting law must be reviewed.

"In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that *meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.*" [Emphasis supplied.]

K.S.A. 75-4318 specifies the precise requirements of the act:

"Except as otherwise provided by law, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot."

The board of education is, of course, the administrative body of the unified school district. The law mandates that all meetings "for the conduct of the affairs of, and the transaction of business by" the board are to be public meetings. The law extends

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also to committees and subcommittees of the board. The negotiating team is not an administrative body of the school district, nor is it a committee or subcommittee of the board. It consists in this instance, you advise, of two employees of the board, and yourself, retained as chief negotiator. Insofar as pertinent here, the open meeting law applies by its express terms only to legislative and administrative bodies which conduct the affairs and transact the business of political and taxing subdivisions of the state. It does not extend to all employees of each political or taxing subdivision. The negotiating team transacts no business of the school district. When it meets, whether in caucus, with the teachers' negotiating team, or with the board which it represents, it does not meet as a legislative or administrative body or agency of the school district, but only as persons employed or retained by the district to perform a specified task for the board, i.e., that of negotiating terms of professional employment with representatives of the teachers of the district. The open meeting law does not extend, either by its express terms or by reasonable and necessary implication, to persons employed or retained by the board of education. It extends only to the board itself.

It is our opinion that the open meeting law, K.S.A. 75-4317 *et seq.* does not apply to the negotiating team of the board of education in any of the circumstances you have described.

Yours very truly,



VERN MILLER
Attorney General

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