



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 3

Mr. James D. Daher, Chairman
Far Northwest Region Health
Planning Council
Box 667
210 South Range
Colby, Kansas 67701

Re: Open Meetings--Regional Health Planning Agency

Synopsis: An areawide regional health planning agency, as defined by K.S.A. 65-2a01, is not a state administrative agency and is not subject to the provisions of the Kansas open meeting law. It must include open meetings in its health planning functions, but the use of written ballots for Council votes is not prohibited.

* * *

Dear Mr. Daher:

I have your letter of December 30, 1975, requesting my views regarding the requirements of state law in the conduct of business of the Far Northwest Regional Health Planning Council, a health planning agency composed of volunteer members appointed by the boards of county commissioners of the eight counties comprising the far northwest region. In the past, you advise, it has been the practice to take Council action by written votes, each member indicating his vote, name and county represented, this information being required in order to assure the secretary that only members were casting votes. However, some question has arisen whether this procedure conforms with requirements of the Kansas open meeting law.

The Far Northwest Regional Health Planning Council is a "planning agency," a term which is defined at K.S.A. 65-2a01(d), *i.e.*,

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"a regional areawide comprehensive health planning group that is approved by the state board of health to conduct areawide comprehensive health planning in a planning region pursuant to P.L. 89-749."

Under K.S.A. 65-2a02, the planning agency must be

"a nonprofit or public organization that is controlled by a board of directors consisting of a majority representing the public and local governments as consumers of health services with the balance being broadly representative of the providers of health services and the health professions."

K.S.A. 65-2a0a requires that the planning agency include the [c]onduct of public meetings" in its health planning activities. From your letter, it is apparent that you do conduct public meetings. However, the question arises whether the Council is subject to the specific requirements of the Kansas open meeting law, and specifically, K.S.A. 1974 Supp. 75-4318, which provides thus:

"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 question arises, then, whether the Council is an administrative body or agency of the state or of its political and taxing subdivisions. You point out that service on the Council is completely voluntary, and that it receives no financial support whatever. The persons who serve on the Council are not, by virtue of that membership, officers or employees of the State of Kansas or of the counties which they represent. They do not receive compensation,

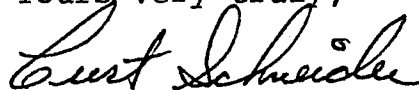
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subsistence or mileage from the state or its political subdivisions for their service. As a planning agency, it is a nonprofit or public organization, voluntariestic in nature, which has a role and performs responsibilities under state law, but which is not itself a state administrative agency. It is not attached to or a part of any department of state or local government. Its composition and procedures are governed by its own constitution, articles of incorporation or bylaws, subject, of course, to necessary compliance with state and federal guidelines if it is to be an eligible "planning agency." The fact that it is an eligible planning agency, however, does not render it an agency of the state or of the counties in its region. Moreover, the Council is not "supported in whole or in part by public funds," a prerequisite for application of the Kansas open meeting law, K.S.A. 1974 Supp. 75-4317 *et seq.*, to its meetings and the conduct of its business.

I can but conclude that the Kansas open meeting law is not itself specifically and directly applicable to the Council. The requirement of K.S.A. 65-2a02 that the Council include public meetings in its health planning functions is not violated by the specific voting procedures described above. I have consistently construed the Kansas open meeting law to prohibit the use of secret written ballots. However, inasmuch as that act is not applicable to the Council, in my view, I find no statute which prohibits the ballotting procedure you have followed, and which is described above.

I hope this clarification will be helpful. I may have indicated a contrary view informally to Mr. Wilson. However, after a thorough review of both the open meetings law, the regional health planning enactment, I must conclude that the open meeting law is not specifically applicable to the Council.

Yours very truly,



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