

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 26, 1977

ATTORNEY GENERAL OPINION NO. 77-174

Mr. William R. Kauffman
Attorney
Kansas Board of Regents
Suite 1416 - Merchants National
Bank Tower
Topeka, Kansas 66603

Re: Colleges and Universities--Student Senate--Open Meeting
Law

Synopsis: The Student Senate at Kansas State University is not
subject to the Kansas open meeting law, K.S.A. 1976
Supp. 75-4317 et seq.

* * *

Dear Mr. Kauffman:

On behalf of the Board of Regents, you request the opinion of the Attorney General whether the proceedings of student government associations at Regents' institutions are subject to the Kansas open meeting law, K.S.A. 1976 Supp. 75-4317 et seq. The question is apparently prompted by the use of secret ballots by the Student Senate at Kansas State University in the election of its officers. The Senate is funded, at least in part if not totally, by student activity fees, you indicate.

K.S.A. 1976 Supp. 75-4318(a) states 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

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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."

To fall within the compass of this provision, the Student Senate must, first, be a legislative or administrative body of the state or a subordinate group or entity thereof, and secondly, it must be supported in whole or in part by public funds. Because the Student Senate is supported by student activity fees which are collected pursuant to K.S.A. 1976 Supp. 76-719, you request my opinion whether those funds are indeed "public funds." That section states thus:

"The board of regents shall fix tuition, fees and charges to be collected by each university and college. If a university or college collects a student-activity fee, the funds so collected shall be set apart and used for the purpose of supporting appropriate student activities."

These fees are collected pursuant to express statutory authority, and are applied to the support of appropriate student activities at institutions under the supervision of the Board of Regents, in accordance with guidelines approved by the Board or subject to its control. They are in no respect private funds when collected and held for distribution to eligible recipient student organizations and groups. Once received by an eligible recipient organization or group, of course, the funds cease to be state monies, but upon collection by the university and while held prior to distribution, the proceeds of such activity fees are in my judgment public monies, which are subject to the appropriation process. See, e.g., ch. 30, § 3(b), L. 1976.

It is not sufficient, however, to bring the Student Senate within the scope of the open meeting law that it is supported in whole or in part by public funds, in this instance, student activity fees. It must also be a legislative or administrative body of the state, and in this instance, of the Board of Regents or of

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the institution itself, Kansas State University. Presumably, the Student Senate wields no legislative power of the state. The pivotal question becomes whether it exercises any administrative authority, either of the Board of Regents or of the chief executive officer of Kansas State University. If it does, it is subject to the open meeting law. If it does not, it is not.

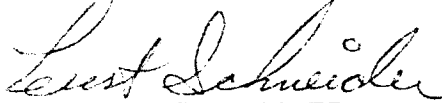
Concerning the power of the Student Senate, it appears that it prepares and submits to the administration of the University proposed budgets for the allocation of student activity fees to eligible student organizations and groups. The budgets and allocations of the Student Senate are not legally binding documents, however; proposals of the Student Senate give the anticipated recipients of such funds no legal claim thereto until the allocations are approved by the president of the University or his designee. Unless and until approved by the appropriate university officials, and ultimately the president, the proposals of the Student Senate have no legal standing whatever. They do represent, of course, valuable and useful recommendations concerning the appropriate use of such funds, which may often be accepted and approved by the University administration. The fact that such recommendations may commonly and customarily be followed with little or no modification does not alter the fact that legal authority for the allocation and distribution of the student activity fees rests with the University itself, and ultimately with the president thereof, for the funds are appropriated in the legislative process to Kansas State University. The recommendations of the Student Senate are precisely that unless and until they are accepted and approved by the president of the University. Thus, the Senate acts in an advisory capacity only, and it does not exercise any administrative authority of the Board of Regents or of the president of the University. Likewise, it is clear to me that in every other area of activity in which the Student Senate takes an active role, its decisions regarding any campus matter are not cloaked in the official authority of the University itself.

The duly constituted authorities of the University may, obviously, approve and adopt its decisions as their own; unless and until that occurs in any instance, however, the decisions of the Student Senate themselves do not carry the official authority of those officers and employees entrusted by law with the supervision, management and administration of the University. Thus, I cannot but conclude that the Senate does not exercise the administrative authority of the State of Kansas, of the Board of Regents, or of the president of Kansas State University, and thus does not

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fall within the compass of the Kansas open meeting law, notwithstanding the Senate is supported by and is entrusted with the expenditure of public funds when and as approved by the administrative officers of the University.

Yours very truly,



CURT T. SCHNEIDER
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