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June 26, 1979

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ATTORNEY GENERAL OPINION NO. 79-125

Mr. L. S. Weller, Superintendent
Unified School District No. 487
209 East Catelpa
Herington, Kansas 67449

Re: Open Public Meetings--Subjects of Discussion
During an Executive Session--Matters Relating
to Employer-Employee Negotiations

Synopsis: A board of education may recess an open public meeting and go into closed or executive session to consult with its representative in employer-employee negotiations. During such consultation, the board and its representative may discuss any facet of such negotiations. However, when the terms of a complete contract have been tentatively agreed upon by the representative of both the employer and the employees, and said contract is submitted to the board of education for ratification, the vote on such ratification must be made during an open public meeting.

* * *

Dear Mr. Weller:

You request our opinion relative to the following questions:

"Can a board of education go into executive session for all matters in teacher negotiations including the consideration of teacher proposals and development of counterproposals by the board, then give instructions to their agent to take to the bargaining table?"

Mr. L. S. Weller
Page Two
June 26, 1979

"What areas of teacher negotiations must be determined in 'open' meetings other than final ratification of negotiated agreements?"

The situation, as we understand it, giving rise to your inquiry is that professional negotiations between the board and the professional employees of Unified School District No. 487 had been in process prior to April 19, 1979, and were, in fact, still continuing as of that date. A special meeting of the board was called for that date to discuss, inter alia, said negotiations.

We are informed that many of the items properly negotiable between the board and the employees had been tentatively approved by the representatives of each group. However, said representatives had not been able to reach tentative agreement on the matter of salaries. It also is our understanding that the representative of the professional employees had made a proposal relative to this subject, and it was this proposal which prompted the board to include the topic of "Teacher Negotiations" on the agenda of that special meeting. It further appears that, during the course of this special meeting, a motion was duly made, seconded and passed whereby the open meeting was recessed for a period of ten minutes so that the board could meet in executive session to consult with its representative relative to the negotiations. Following said recess, the open meeting was continued, but the only action taken was adjournment of said meeting.

When negotiations between the representatives of the two groups resumed, the representative for the board of education advised the employees' representative that the board had rejected the employees' salary proposal. The employees' representative asked when the board had decided to reject the proposal. The board's representative replied that this decision had been made by the board during the executive session of the board. It has been questioned whether this constitutes a violation of the Open Meetings Law, K.S.A. 75-4317 et seq., and it is this factual situation which prompts your inquiries.

Your first inquiry concerns the issue of whether a board of education may recess an open public meeting and go into executive or closed session to consult with its representative regarding negotiations between it and the professional employees of the district. The provisions of K.S.A. 75-4319 are determinative of this inquiry. Pursuant to the relevant portion of subsection (b) thereof:

Mr. L. S. Weller
Page Three
June 26, 1979

"No subjects shall be discussed at any closed or executive meeting, except the following:

. . . .

"(3) consultations with the representative of the body or agency in employer-employee negotiations;"

Thus, pursuant to the express provisions of this statute, a board of education may recess an open public meeting for the purpose of going into executive or closed session to consult with its representative in employer-employee negotiations.

Regarding the areas of teacher negotiations which must be determined in an open public meeting, it is our opinion that your inquiry is answered by a consideration of certain provisions of the Collective Negotiations Act (K.S.A. 72-5413 et seq.) and the Open Meetings Law (K.S.A. 75-4317 et seq.).

K.S.A. 1978 Supp. 75-4318(a), in relevant part, provides:

"[A]ll meetings for the conduct of the affairs of, and the transaction of business by, all . . . agencies of the state and political and taxing subdivisions thereof, including boards . . . 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" (Emphasis added.)

In addition, K.S.A. 75-4319, relating to closed or executive sessions, provides in part:

"No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act." (Emphasis added.)

Mr. L. S. Weller
Page Four
June 26, 1979

In our judgment, these statutory provisions express a clear legislative intent to prohibit any public body, including a board of education, from taking any binding action on any matter, unless the vote thereon is made at an open public meeting. Thus, the key to resolution of your second inquiry is the phrase "binding action."

In regard to negotiations between a board of education and the professional employees of the school district, K.S.A. 72-5421 states:

"A board of education and a representative selected or designated pursuant to the provisions of sections 3 [72-5415] to 8 [72-5420] of this act may enter into an agreement covering terms and conditions of professional service. Such agreements become binding when ratified by a majority of the members of the board of education and a majority of the members of the applicable negotiating unit." (Emphasis added.)

Thus, normally the only binding action taken by a board of education regarding negotiations with the professional employees of the school district is ratification or rejection of the agreement tentatively made between its representative and the employees' representative. If such is the case, it is our opinion that it is only the vote on the issue of whether to ratify the proposed agreement which must be made during the course of an open public meeting. Discussions between a board and its representative during the negotiation process, if had during a properly called recess of an open meeting pursuant to K.S.A. 75-4319, need not be open to the public.

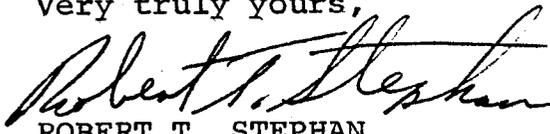
In order that the foregoing not be misconstrued, it should be noted that, should the board decide to meet, confer, discuss or consult with the employees' organization or its representative, regarding any matter concerning the negotiations, any such meeting, conference, consultation or discussion must be had during the course of an open public meeting. Such is required by K.S.A. 1978 Supp. 72-5423(b), to wit:

"Every meeting, conference, consultation and discussion between a professional employees' organization or its representatives and a board of education or its representatives during the course of professional negotiation except meetings called for by sections 8 [K.S.A. 1978 Supp. 72-5427] and 9 [K.S.A. 1978 Supp. 72-5428] of this act shall be subject to the provisions of the Kansas open meetings law, and any amendments or supplements thereto."

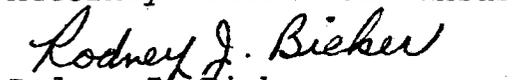
In our judgment, the above statutory provision requires not only that any direct dealings between the board and its professional employees be subject to the Open Meetings Law, but also, that all indirect dealings by the board (i.e., through its representative) with the employees' organization be subject to the law as well. This latter mandate is significant because it insures that the results of discussions had between a board and its representative during a closed or executive session will be made known publicly when the board's representative returns to the bargaining table and tells the employees' representative whether the proposals of the employees are acceptable to the employer.

Therefore, to reiterate, it is our opinion that a board of education may properly recess an open public meeting to consult with its representative in closed or executive session regarding the professional negotiations with the school district's professional employees. The results of any such discussion will be made known during the course of the negotiations between the board's representative and the employees' representative and, therefore, are subject to public scrutiny due to the requirements of K.S.A. 1978 Supp. 72-5423(b). In addition, if the board deals with the employees' organization directly, not through the board's representative, concerning any or all aspects of the negotiations, any such dealings relating to the professional negotiations process are subject to the Open Meetings Law. However, if a board negotiates with its professional employees only through its duly appointed representative, the only binding action to be taken by the board is to ratify or reject the agreement between it and the professional employees. In such event, the only action by the board which is subject to the Open Meetings Law is its vote on such ratification or rejection.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General