



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 4, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-221

John P. Churchill, Director
Johnson County Area Agency on Aging
115 West Park
Olathe, Kansas 66061

Re: State Departments; Public Officers and Employees--
Open Public Meetings--Bodies Subject to Open
Meetings Act

Synopsis: A private nursing home is not a governmental body
and, therefore, is not subject to the Kansas Open
Meetings Act (K.S.A. 75-4317 et seq.), even though
it may receive public funds in its operations.

* * *

Dear Mr. Churchill:

In your letter of May 8, 1979, you inquire whether the Open Meetings Act is applicable to a nursing home which receives public moneys in its operations. Specifically, you ask whether the receipt of Federal funds, as disbursed through the state, requires a nursing home to open the meetings of its board to members of a citizens' task force.

The Kansas Open Meetings Act was enacted in 1972, with amendments to various sections thereof occurring in 1975, 1977 and 1978, and appears in the Kansas Statutes Annotated at 75-4317 et seq. The legislative declaration of policy underlying the law is set out in the first section thereof at (a):

"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."

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Thus, the Act applies to governmental bodies, as contrasted with nongovernmental groups. The more precise reach of the Act is prescribed by K.S.A. 1978 Supp. 75-4318(a) as follows:

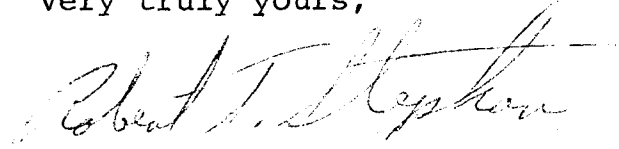
"Except as otherwise provided by state or federal law . . . , all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, 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 . . ."
(Emphasis added.)

It is clear from the above that in order to be subject to the Act, the nursing home must be found to be a legislative or administrative body, and it must receive or expend and be supported in whole or in part by public funds. There can be no doubt that the second prong of this test is met, for the nursing home does receive public funds from the federal government, via the state. This alone, however, does not bring it within the Open Meetings Act, for in addition to public support, the body in question must also be a legislative or administrative body or agency of the state or one of its political subdivisions. Clearly, a private nursing home is not a legislative body. Similarly, it exercises no administrative authority for the county or the state. Rather, it hires its own employees and formulates its own policies and procedures, subject of course to compliance with required state and federal guidelines in order to be eligible for public funds. However, the receipt of public funds, by itself, does not render it an agency of the state or of any county or city, and meetings of its board of directors may be closed to the public, including a citizens' group of the kind involved here.

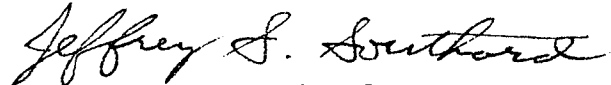
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In conclusion, it is our opinion that a private nursing home is not a legislative or governmental body or agency of the state, or political taxing subdivision thereof, and is not subject to the Kansas Open Meetings Act, even though it may receive public funds in its operations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk