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October 9, 1979

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ATTORNEY GENERAL OPINION NO. 79- 225

Dennis W. Moore
Office of the District Attorney
Johnson County Courthouse
P. O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: State Departments; Public Officers and Employees--
Open Public Meetings--Votes Taken by Bodies Exer-
cising Quasi-Judicial Functions

Synopsis: While a board of zoning appeals is not subject to
the Kansas Open Meetings Law (K.S.A. 75-4317 et
seq.) when acting in a quasi-judicial capacity,
this exclusion extends only to deliberations and
not votes, which must be taken in public.

* * *

Dear Mr. Moore:

In your letter of July 10, 1979, you seek the opinion of this
office on the question of whether an administrative body
authorized by law to exercise quasi-judicial functions may
decide a matter by vote in a meeting not open to the public.
Specifically, you inquire whether a Board of Zoning Appeals
may conduct its vote, as well as its discussion, of a matter
in executive session, with the public being told only of the
result.

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The Kansas Open Meetings Act was passed into law in 1972, was amended in 1975, 1977 and 1978, and appears in the Kansas Statutes Annotated at 75-4317 et seq. The legislative declaration of policy underlying that law is set out in the first section thereof:

"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."

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) thus:

"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 and no binding action by such bodies shall be by secret ballot . . . ,"

The 1977 Legislature amended what was then K.S.A. 1976 Supp. 75-4318 to add the following language at the end of the above-quoted material:

"[A]ny administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving quasi-judicial functions."


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The questions of whether a board of zoning appeals exercises quasi-judicial functions, and whether the Open Meetings Act applies to such a board when it exercises these functions, appear to have been dealt with in an earlier opinion from this office, Attorney General Opinion No. 78-13. As in your case, the powers of a board of zoning appeals in Johnson County were at issue, and we would find the reasoning contained therein to be applicable here, namely that deliberations relating to quasi-judicial decisions are excepted from the Act entirely. A copy of the full opinion is included for your reference.

As to whether a board of zoning appeals may take binding votes while in closed session, we would first note that the above-quoted statutory language which deals with bodies exercising quasi-judicial functions excludes them from the Act only when they are "deliberating" certain matters. Under all other circumstances they are included. Next, we note that the legislature, in K.S.A. 75-4319, drew a clear distinction between when deliberations could be closed, and when votes could be closed. While as a general rule executive sessions are not allowed, subsection (b) of that statute sets out six subjects which may be deliberated on in closed meetings. However, no such subjects are recognized in (c), which prohibits the taking of binding action upon any matter during a closed session. If the exclusion for quasi-judicial deliberations found in K.S.A. 1978 Supp. 75-4318 is read in this context, it would appear that while all such deliberations may be closed, any votes taken may not. Why else would only the term "deliberations" be used when the legislature recognized a distinction between the two? This result is in keeping with both the intent of the legislature in enacting the Open Meetings Act (i.e., that the "transaction of government business be open to the public"), and the rule of statutory construction found at K.S.A. 77-201, Second (i.e., words should be construed according to the context in which they appear).

Therefore, while a board of zoning appeals is not subject to the Kansas Open Meetings Act when acting in a quasi-judicial capacity, this exclusion extends only to deliberations and not votes, which must be taken in public.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk
Enclosure: Attorney General Opinion No. 77-13