

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

July 28, 1980

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ATTORNEY GENERAL OPINION NO. 80- 168

Mr. Oliver Kent Lynch
Cherokee County Attorney
Columbus, Kansas 66725

Re: State Departments; Public Officers, Employees--
Kansas Open Meetings Act--Violations as Grounds
for Forfeiture of Public Office

Synopsis: The willful neglect of duty by a member of a governing body in failing to perform those duties imposed by the Kansas Open Meetings Act may constitute grounds for ouster pursuant to K.S.A. 60-1205. Cited herein: K.S.A. 60-1205, 75-4317, K.S.A. 1979 Supp. 75-4318, K.S.A. 75-4319, 75-4320.

* * *

Dear Mr. Lynch:

You request the opinion of this office whether a violation of the Kansas Open Meetings Act, K.S.A. 75-4317, et seq., is grounds for ouster of public officers pursuant to K.S.A. 60-1205. That statute provides:

"Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully misconduct himself or herself in office, (2) willfully neglect to perform any duty enjoined upon him or her by law, or (3) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his or her office and shall be ousted from such office in the manner hereinafter provided."

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Clearly, persons holding positions of public trust or profit as members of public governing bodies of state or local units of government are subject to forfeiture of office under the above-cited statute. It is equally clear that the Kansas Open Meetings Act imposes upon such officers, as members of governing bodies subject to the Act, the duty to comply with its mandates. Such mandates include the obvious requirement that meetings of governing bodies be open except where executive sessions are authorized by K.S.A. 75-4319. See K.S.A. 1979 Supp. 75-4318. Another duty imposed is that the notice of date, time and place of all regular and special meetings must be provided to any person who requests such notice. K.S.A. 1979 Supp. 75-4318(b). This statute specifically makes it the "duty" of the presiding officer or the person calling the meeting to provide the required notice. Id. at (c).

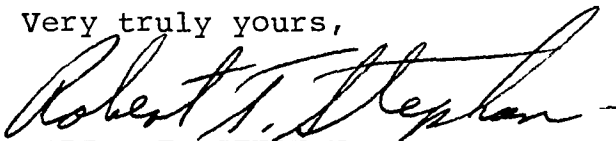
The open meetings law imposes the above-mentioned duties upon "any member of the body or agency subject to the act" by subjecting any such person to civil penalties for knowing violations of the act or intentional failure to furnish the notice required. K.S.A. 75-4320. However, in our judgment, the imposition of such penalties does not manifest a legislative intent that such penalties are to constitute the exclusive remedy for a breach of duty created by the Act. And absent such an expression of intent, we see no reason to foreclose the availability of other statutory or common law remedies otherwise applicable in the case of a breach of duty. Likewise, nothing in the ouster statute suggests that it may not be invoked where other statutory sanctions are available. Indeed, the language of the ouster statute itself suggests most strongly that removal from office is intended as an additional or cumulative sanction. Specifically, 60-1205(3), relating to ouster following an act constituting a violation of any penal statute involving "moral turpitude," implies that criminal remedies, as well as ouster, are possible and nothing in this section suggests that the latter is foreclosed by successful enforcement of the former. In the case of State ex rel. Londerholm, v. Schroeder, 199 Kan. 403 (1967), numerous criminal statutes providing specific penalties, including fines, were cited in the ouster action against a county clerk. The mere existence of such penalties did not serve to bar a quo warranto action for ouster.

Hence, we believe the duties imposed upon members of governing bodies subject to the Kansas Open Meetings Act, are duties "enjoined upon him or her by law" within the letter and spirit of K.S.A. 60-1205(2) and that the willful neglect of such duty is grounds for ouster as specified therein. Kansas case law, as elsewhere, supports the statutory proposition that willful neglect of duty is sufficient cause for removal of a public officer from office. See State ex rel., Jackson v. Wilcox, 78 Kan. 597 (1908) and 56 Am.Jur.2d Municipal Corporations §3 (1971).

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It is, therefore, our opinion that the willful neglect of duty by a member of a governing body in failing to perform those duties imposed by the Kansas Open Meetings Act may constitute grounds for ouster pursuant to K.S.A. 60-1205.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:phf