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January 16, 1981

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ATTORNEY GENERAL OPINION NO. 81- 15

Robert J. Watson
City Attorney of Kansas City, Kansas
Ninth Floor -- Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: State Departments; Public Officers, Employees--Open
Meetings--Notice and Agenda

Synopsis: A city ordinance calling for notice of regular or special meetings only to those who request it in writing does not comport with the mandates of the Kansas Open Meetings Act. Although written requests for notice of government meetings are preferred and the absence of a written request makes prosecution under the Act nearly impossible, oral requests for notice are to be honored. Requests for agenda also may be made orally. Notice of special meetings cannot be restricted to those situations where prior notice is "possible." If a meeting is prearranged and subject to the Kansas Open Meetings Act notice must be provided for those who request it. Cited herein: K.S.A. 75-4317, K.S.A. 1980 Supp. 75-4318, K.S.A. 75-4320.

* * *

Dear Mr. Watson:

You request the opinion of this office regarding a pair of proposed city ordinances relating to procedures for meetings of the Kansas City, Kansas, City Commission. You inquire whether sections 1, 2 and 3 of the

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pertinent ordinance are lawful within the meaning of K.S.A. 75-4317 et seq., the Kansas Open Meetings Act.

Section 1 of the proposed ordinance (attached) provides for Regular Formal Meetings of the Commission each Tuesday and Thursday of every week unless otherwise specified. This section provides that an agenda will be prepared and made available to any person requesting it. The section makes no mention of notice to the public of such regular meetings.

K.S.A. 1980 Supp. 75-4318 provides in pertinent part that "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 . . . shall be open to the public."

The Act also provides th"[n]otice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such information." K.S.A. 1980 Supp. 75-4318(b).

Hence, the Act requires individual notice of all regular "meetings" of the City Commission as that term is used in the law. Section 1 of the proposed ordinance does not mention how notice of the date, time and place of regular meetings is to be provided. Clearly, publication of the ordinance designating Tuesdays and Thursdays as the days for regular meetings does not in itself comply with the mandates of the Kansas Open Meetings Act. Individual notice is still required.

Currently, Kansas does not rely upon publication, posted or constructive notice provisions and instead requires notice be provided only to those who request it. Certainly, the City is free to publish or post notice but such action does not abrogate the clear statutory duty to provide actual notice to any person requesting such notice. For the convenience of the City, notice of regular meetings may be provided in a single notice to the requester without supplemental notices required for meetings covered by the single notice of regular meetings. See Kansas Attorney General Opinion No. 77-337.

In addition, the Act requires that any agenda prepared for a "meeting" covered by the Act, must be "made available to any person" requesting it. K.S.A. 1980 Supp. 75-4318(d). The ordinance as proposed is consistent with this requirement.

Section 2 of the proposed ordinance concerns Special Formal Meetings. Such meetings are those called by two or more commissioners upon

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written notice. The section, however, attempts to restrict the obligation of the City to provide notice and agenda as provided by the Act, and is, therefore, contrary to law. The ordinance attempts to limit the providing of notice to persons who have requested such notice in writing. The Act makes no such limitation. A request for notice may be made orally. If, in fact, an oral request for notice is communicated to the governmental agency or body in a reasonable fashion such that notice may be provided without undue burden on the public agency, such request must be honored. Failure of the member calling the meeting to provide notice which had been requested orally subjects the member to prosecution for civil penalties as provided in K.S.A. 75-4320.

We have on previous occasions cautioned the public and press to submit requests for notice in writing because of the severe practical problems involved with prosecution of notice violations under the Act where the request is not recorded in black and white. Written requests for notice are clearly preferred. However, we cannot allow requests for notice made orally to be ignored when effectively communicated to a governmental body or agency.

In addition, Section 2 declares that "no agenda will be prepared or distributed." This provision is inconsistent with the Act if in fact an agenda is prepared, and Section 2 seems to contemplate that some form of agenda will be prepared. Section 2 states that Commissioners are to be provided with "written notice" stating "the object of such special meeting." In our judgment, any writing which states the item or items to be discussed at a meeting is an agenda within the meaning of the Kansas Open Meetings Act. Hence, if any person requests a copy of the document which states the object of the special meeting, the copy must be made available.

Section 3 of the proposed ordinance provides for "reasonable" prior notice of prearranged informal meetings or work sessions involving two or more commissioners "where possible." The words "where possible" limit the requirement of the ordinance to a standard of conduct less than that required by the Act. The Act contains no such practical limitations. Notice of all prearranged gatherings subject to the Act is required by law.

In addition, Section 3 attempts to limit the providing of notice to only those who have requested it in writing. As previously noted this is an impermissible limitation, compliance with which will not insure compliance with the Act. Oral requests for notice of public meetings are not to be ignored.

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Finally, we turn to the following clause in Section 3:

"[T]he press and the public is [sic] hereby put on notice that such informal gatherings may occur in the offices of the three city commissioners without prearrangement, for which no prior notice can or will be given nor agenda prepared, and the press and public are invited to attend and be present at such informal meetings as they may occur throughout the day in the offices of the three city commissioners."

To the extent this provision is an attempt to provide public knowledge of the working atmosphere of city hall and invite public access to gatherings that are not otherwise covered by the open meetings law (because they are not "prearranged"), the provision is unobjectionable. However, to the extent the provision attempts to excuse members from their responsibilities to provide notice of prearranged gatherings, it is ineffectual.

Just what constitutes a "prearranged" gathering is a question of fact. This office has opined that "prearranged" means the opposite of "chance." But we have also concluded that prearrangement of a meeting may be the result of customs which members know indicate a meeting is to be held. We call to your attention the coffee and roll sessions of the Emporia City Council which were a matter of custom for that body following its regular meetings. Letter to Jay Vander Velde (attached). Likewise, the practice of certain governing bodies to gather prior to the regularly scheduled meeting to establish an agenda, may itself, as a matter of habit and custom constitute a prearranged gathering of such bodies.

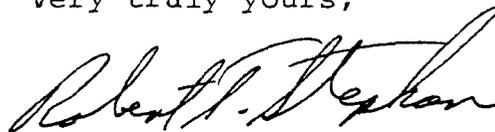
In sum, the language of Section 3 of the proposed ordinance does increase public knowledge of the possible gatherings of the City Commission. It does not, however, alleviate the burden of notice and access where the gathering is in fact prearranged and hence a "meeting" under the open meetings law.

Therefore, it is our opinion that the ordinance as drafted and attached does not comply with the requirements of the Kansas Open Meetings Act. Behavior of members consistent with the ordinance will not insure

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compliance with the Act, as the ordinance mandates a lesser standard of conduct with regard to notice and agenda of regular and special meetings of the City Commission.

Very truly yours,



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Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJs:phf
Enclosures