



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 22

Darrel E. Johnson  
Morton County Attorney  
701 Vilymaca Street  
Drawer "O"  
Elkhart, Kansas 67950

Re: State Departments; Public Officers, Employees--Open Meetings  
--Oral Notice; Closed Sessions

Synopsis: Although written requests for notice of government meetings are preferred and the absence of a written request makes prosecution under the Kansas Open Meetings Act nearly impossible, oral requests for notice are to be honored. In addition, meetings for the discussion of personnel matters of non-elected personnel may be held in executive session, but only after the notice requirements and procedures for recessing into closed sessions have been followed. Cited herein: K.S.A. 75-4317, 75-4317a, K.S.A. 1980 Supp. 75-4318, K.S.A. 75-4319, 75-4320.

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Dear Mr. Johnson:

You inquire regarding the application of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., to meetings of the school board for U.S.D. No. 218. Specifically, you advise that the school board met on November 19, 1980, and voted to seek the resignation of a senior high school principal of the district. Subsequently, on December 8, 1980, the board again met in full public view; in fact, roughly 300 district

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patrons attended this meeting to inquire regarding the reasons for the requested resignation. At the December 8 meeting the board did not elaborate on the reasons for the resignation request, but offered to do so at the next meeting. Some patrons attending the December 8 meeting orally requested to be notified of the next meeting.

Following the December 8 meeting the board met in "special session" to discuss and prepare the answers to the questions raised by the previous public meeting. This special session was held in private (some non-members were expelled from these meetings) without the providing of the notice requested by the patrons attending the December 8 meeting. In this context, you request our opinion whether the circumstances as described are a possible violation of the Kansas Open Meetings Act.

Clearly, the Kansas Open Meetings Act applies to meetings of school boards, since school boards are legislative or administrative bodies or agencies of the state or its political or taxing subdivisions. K.S.A. 1980 Supp. 75-4318. Equally clear is that gatherings of board members for the purpose of discussing the reasons for a requested resignation is a "meeting" for the purpose of discussing the business or affairs of the body. K.S.A. 75-4317a.

Hence, we see the questions you ask as concerning the notice requirements of the Act, the scope of the meetings covered by the Act and the procedures to be followed for executive sessions.

K.S.A. 1980 Supp. 75-4318(b) provides in pertinent part: "Notice 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." The fact that the request for notice of meetings of governmental bodies was communicated to the school board orally does not in itself negate its effect as a valid request for notice of future meetings. 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. Intentional failure of any member to honor a request for notice may subject the members to civil penalties not to exceed \$500. K.S.A. 75-4320.

This office stated in Kansas Attorney General Opinion No. 81-20:

"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." Id. at 3.

As previously noted, the notice requirements apply to both regular and special meetings. Indeed, the label attached to a gathering of school board members is not decisive as to the application of the Open Meetings Act. The Kansas law applies to prearranged gatherings "for the conduct of the affairs of, and the transaction of business by" the local school boards. This includes meetings commonly labeled work sessions, study sessions, etc. That no binding action is taken is not particularly important in the application of the open meetings principle.

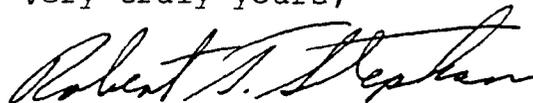
If there was ever any doubt that such gatherings were subject to the Act, these apprehensions were laid to rest by the Kansas Court of Appeals in Coggins v. Public Employees Relations Board, 2 Kan. App. 2d 416 (1978), where the Court concluded that the term "meetings," as used in the Act, "includes all gatherings at all stages of the decision-making process." Id. at 423. We cannot overemphasize the need to view all prearranged gatherings of school board members as subject to the Act if the public's business is discussed. The formalities of agenda, minutes or even a quorum are not prerequisite to application of the Act.

Finally, there seems to be considerable confusion among local units of government as to the proper procedure for and use of closed or executive sessions. All meetings subject to the Act are open unless closed pursuant to K.S.A. 75-4319. But whether open or closed, any meeting subject to the Act requires compliance with the law's notice provisions. In addition, closed or executive sessions are "recesses," not closed meetings. The law clearly contemplates that members will meet in the open and then recess to a closed meeting only after following the formal procedures outlined in K.S.A. 75-4319(a).

Discussions of personnel matters of non-elected personnel may be discussed during closed sessions conducted during otherwise open meetings for which the notice requirements have been met. Personnel matters of non-elected personnel may not be discussed at secret meetings or gatherings where the procedures for executive sessions have not been followed.

In sum, although written requests for notice of government meetings are preferred and the absence of a written request makes prosecution under the Kansas Open Meetings Act nearly impossible, oral requests for notice are to be honored. In addition, meetings for the discussion of personnel matters of non-elected personnel may be held in executive session, but only after the notice requirements and procedures for recessing into closed sessions have been followed.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General