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ATTORNEY GENERAL OPINION NO. 81- 39

The Honorable Robert V. Talkington  
P.O. Box 725  
20 North Washington  
Iola, Kansas 66749

Re: State Departments; Public Officers, Employees--Open  
Public Meetings--County Hospital Board of Trustees;  
Closed Executive Sessions

Synopsis: Governing bodies subject to the Kansas Open Meetings Act may not discuss salary schedules for hospital personnel, hospital budgets, hospital room rates, or other related financial affairs during closed or executive session. Salaries for hospital employees may be discussed during executive session only when such discussion focuses on individuals. Cited herein: K.S.A. 75-4317, K.S.A. 1980 Supp. 75-4318 and K.S.A. 75-4319.

\* \* \*

Dear Senator Talkington:

As attorney for the Board of Trustees of Allen County Hospital, you request our opinion concerning closed executive sessions of meetings subject to the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. You inquire whether meetings may be closed for executive sessions to discuss the following four matters:

- "1. Hospital budgets and other related financial matters.
- "2. Salary schedules for personnel of the hospital including both supervisory and nonsupervisory personnel.

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"3. Hospital room rates.

"4. Salaries for any employees of the hospital whether discussed on an individual basis or as a group."

The Board of Trustees of Allen County Hospital is organized under K.S.A. 19-1801 et seq., and is a governing body subject to the Kansas Open Meetings Act. See K.S.A. 75-4318 and Attorney General Opinion No. 80-159. The Kansas Open Meetings Act requires that meetings of this body be open to the public, except to discuss certain exclusive subjects. These subjects are listed in K.S.A. 75-4319, which states in pertinent part thus:

"(b) No subjects shall be discussed at any closed or executive meeting, except the following: (1) Personnel matters of nonelected personnel;

"(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

"(3) consultations with the representative of the body or agency in employer-employee negotiations;

"(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

"(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if he or she so requests; and

"(6) preliminary discussions relating to the acquisition of real property.

"(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act."

We note at the outset that this statute proscribes discussion of any subjects other than those listed, thus all other matters must be

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discussed in open session. Of the subjects exempted for closed or executive sessions listed above, only the first appears to have any application to your questions.

Provision is frequently made in open meetings laws for discussions of personnel matters to permit such discussions to be conducted during a closed or executive recess. In fact, it is probably the most widely recognized exception to open meetings laws. See National Association of Attorneys General, Open Meetings: Exceptions To State Laws (1979) at 21. This provision is generally included and drafted to protect the privacy of employees, [see Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State?, 25 Kan.L.Rev. 169, 195 (1977)]; saving personal reputations, [see Comment, New York Open Meetings Law: A Critical Evaluation, 41 Alb.L.Rev. 329, 344, (1977)] and encouraging qualified people to select and remain in the employ of government, [see Note, Open Meetings Statutes: The Press Fights for the "Right to Know," 75 Harv. L.Rev. 1199, 1208 (1962)]. Since the exceptions to open meetings laws are to be narrowly construed, the exception for personnel matters is not as broad as might be thought. See e.g., Illinois News Broadcasters Ass'n v. City of Springfield, 22 Ill.App.3d 226, 317 N.E.2d 288 (1974) (referring to the Illinois open meetings law).

In Attorney General Opinion Letter to Mike Taylor, February 5, 1980, referring to a discussion by the Wichita City Commission of the executive reorganization of police and fire departments, the Kansas Attorney General observed:

"The obvious intent of this provision [the personnel exception] is to allow discussion regarding individual employees because of the personal and sensitive nature of such discussions. The public policy issues inherent in the structuring or organization of administrative agencies was not intended to fall within this exception to the open meetings requirements." Id. at 1.

In Attorney General Opinion No. 80-102 we discussed this excepted subject in the context of discussions of the Corrections Ombudsman Board concerning staff members of the Department of Corrections. We noted there that:

"[I]ndividual members of the correctional staff would qualify as 'nonelected personnel' within the meaning of the first exemption. However, this statute should

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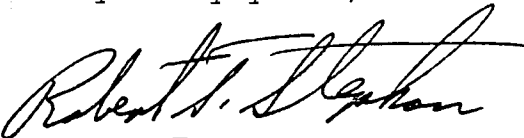
not be read as allowing discussions about general topics or groups of staff members or inmates. Rather a closed meeting should be called only when such discussions will concern specific staff members and/or inmates."

Generally, this exception should be applied only when the discussion relates to individuals whose privacy interests might be affected by a public airing. Under this view salary schedules for hospital personnel and salaries for employees when discussed as a group could not be considered during executive session. Discussion of salaries on an individual basis could be done in closed session where the "individual's privacy interests could be affected by public airing."

Thus, of the four matters about which you inquire, the first three may not be discussed in the privacy of an executive session. The fourth item, dealing with salaries of individual employees or groups of employees, may be discussed during executive sessions only where the privacy of individuals is sought to be protected. Discussions concerning groups of employees which do not infringe upon the individual are beyond the purposes for which the exception for personnel matters was created. Although the language of this exception might be broadly interpreted to permit generalized discussions, such an interpretation is clearly contrary to the spirit of the Act and our previous interpretations.

To summarize, the governing bodies subject to the Kansas Open Meetings Act may not discuss salary schedules for hospital personnel, hospital budgets, hospital room rates, or other related financial affairs during closed or executive session. Salaries for hospital employees may be discussed during executive session only when such discussion focuses on individuals.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:phf