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ATTORNEY GENERAL OPINION NO. 81- 94

The Honorable Charles F. Laird
State Representative, Fifty-Ninth District
State Capitol, Room 279-W
Topeka, Kansas 66612

Re: State Departments; Public Officers, Public
Employees -- Open Public Meetings -- Applica-
bility to Parochial Schools

Synopsis: Parochial school boards, such as Hayden High
School Board, are not bodies subject to the Kansas
Open Meetings Act. Cited herein: K.S.A. 75-4317,
K.S.A. 1980 Supp. 75-4318.

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Dear Representative Laird:

You inquire as to the applicability of the Kansas Open Meet-
ings Act to Parochial School Boards. You specifically ask
whether the Hayden High School Board is a body subject to this
Act.

The Kansas Open Meetings Act was enacted in 1972, and has
since undergone revision on several occasions. It has been
the subject of numerous opinions from this office. The leg-
islative declaration of policy underlying this law, which
appears in the Kansas Statutes Annotated at K.S.A. 75-4317
et seq., is set out in the first section thereof:

"In recognition of the fact that a represen-
tative government is dependent upon an inform-
ed 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."

A more precise statement of the reach of the Act is expressed
in K.S.A. 1980 Supp. 75-4318, which states in pertinent part:

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"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, commission, 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" (Emphasis added.)

In Attorney General Opinion No. 80-239 this office recognized that the Kansas Open Meetings Act creates both a functional test and a public funding test. In that opinion we observed:

"To be subject to the Act the body or agency in question must: (1) Be a legislative or administrative body of the state or a political or taxing subdivision; (2) receive or expend public funds; [and] (3) be supported in whole or in part by public funds; or (4) be a subordinate body or agency of a body or agency described by the first three elements above listed."

We have been informed that parochial schools, such as Hayden High, receive certain limited federal and state funds. These funds are grants for purposes such as reimbursement for school lunch programs, procurement of certain equipment (such as athletic gear), and certain other student-related programs. It could thus be said that Hayden High receives public funds. However, further examination of the public funding test is not necessary in this instance, because we believe the functional test mentioned above is dispositive of your question.

The application of the Act is limited by its terms to legislative or administrative bodies "of" the state or its political and taxing subdivisions. K.S.A. 1980 Supp. 75-4318. "The Act is not intended to include private associations or corporations which are not part of government." Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241, 252 (Winter 1981).

We cannot conclude that the legislature intended that every recipient of public moneys is, by virtue of such receipt, subject to the Kansas Open Meetings law. See 1979 Kansas Attorney General Opinion No. 79-221 (private nursing home is not subject to the Kansas Open Meetings Act even though it

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receives public funds pursuant to contract). While the school must abide by the laws of the State of Kansas applicable to all residents and groups of residents, as a private, church-related school, Hayden High School is not part "of" state or local government. The school is not a creature of law. It is not created or operated pursuant to statute or administrative regulation. Its directors are neither elected at a general or special election nor appointed by any government official. The executive board does not, indeed cannot, exercise any of the sovereign power of the State of Kansas. In short, the school is not an agency of the general public. It is the agent of an essentially private association of persons organized to exercise their freedom of religion. The Kansas Open Meetings Act was never intended to inhibit or restrain the exercise of such freedoms of religion and association.

Therefore, it is our opinion that parochial school boards, such as Hayden High School Board, are not bodies subject to the Kansas Open Meetings Act.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle