



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 12, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81- 137

Norman L. Reynolds
Superintendent of Schools
Unified District No. 431
106 North Main Street
Hoisington, Kansas 67544

Re: State Departments; Public Officers, Employees --
Open Public Meetings -- Requests for Notice; Charges

Synopsis: A request for notice of public meetings remains valid indefinitely, at least for a reasonable period of time. No written statement is required to withdraw a request for notice, although such written withdrawal would be advisable. No charge may be made for the providing of notice of public meetings. Requests for notice are to be honored regardless of residency of the requester. And the death of the requester permits the governmental unit to cease providing such notice, except where the deceased person had requested notice as a representative of an organization or known individuals. Cited herein: K.S.A. 75-4317, K.S.A. 1980 Supp. 45-204, 75-4318.

* * *

Dear Mr. Reynolds:

You request advice from this office regarding the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., as amended by 1981 House Bill No. 2103. Specifically, you raise five questions concerning the notice requirements of the Act. The notice provisions of the Act are found at K.S.A. 1980 Supp. 75-4318(b) and declare as follows:

"(b) 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, except that:

Norman L. Reynolds
Page Two
June 12, 1981

"(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition; and

"(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association."

We will restate each of your questions and respond to them separately.

"1. How long is the request of notice valid?"

The Act itself does not specify a length of time in which a request for notice continues so as to require the public agency or body to provide notice of meetings. In Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241 (1981), the authors addressed your inquiry this way:

"Since the Kansas notice requirement rests upon the concept of "requested" notice, the timing of the request for notice also could be crucial. Unfortunately, the Act does not specify the length of time a given request remains 'active.' Thus, while refusing notice to a person whose request is months old is probably improper, it seems beyond the intent of the statute to require governing bodies to continue providing notice to persons whose request has long been gathering dust. What is a 'reasonable' notice depends on the age of the request and in some cases the identity and interest shown by the requesting person. As a matter of policy, a governing body would be well advised to inquire of persons whose requests have grown stale as to their desire for continued notice." (Emphasis added.) Id. at 265, 266.

We concur in this reasoning and would add only that a good faith effort to supply requested notice of government meetings will not be overlooked by the courts, since the doctrine of substantial compliance is the apparent standard in Kansas.

Norman L. Reynolds
Page Three
June 12, 1981

See, Olathe Hospital Foundation, Inc. v. Extendicare, Inc.,
217 Kan. 546, 562 (1975).

"2. Is a written statement required if the person that made the request wants to cancel the request of notice?"

Again, the statute does not address this issue; however, the problem suggested here is more a problem of providing too much notice. Notice may be requested orally (Attorney General Opinion No. 81-22) and given orally (Smoot and Clothier, supra, at 3). Hence, absent contrary rule, ordinance or policy, we would conclude that a request for notice may be withdrawn orally. However, since the delivery of notice contemplated by the situation you pose is more extensive than is required by the Act (i.e., providing notice to persons who no longer desire it), we cannot conclude that a local policy permitting requesters to withdraw such request only by a written statement would be contrary to the letter or spirit of the open meetings law. In sum, state law does not require a written statement to withdraw a request for notice of public meetings. However, as a matter of sound public policy, government bodies may desire to continue to provide requested notice, unless they have received a written request to discontinue the providing of notice to particular persons.

"3. Can the person making the request be charged for the cost of providing the notice?"

The Kansas Open Meetings Act does not authorize any charge for the providing of notice. It only requires that such notice shall be provided. Again, quoting Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, supra at 267:

"[A]nother problem of individual notice under Kansas law results from the statute's failure to specify permissible methods of notice. Presumably, oral notice in the form of personal contact or telephone conversation, or written notice, through use of telegrams or letters, would be adequate. Whether notice can be refused by a governmental body when the request is not accompanied by a self-addressed stamped envelope is doubtful; however, an agenda provided by such means is adequate." (See Attorney General Opinion No. 79-218.)

The providing of notice of public meetings is an integral part of conducting the public's business. It is a cost of doing business. Nothing in the Kansas Open Meetings Act

Norman L. Reynolds
Page Four
June 12, 1981

suggests that local government bodies may erect a barrier to the providing of requested notice. Absent authorization by the legislature for such charge (see K.S.A. 1980 Supp. 45-204 authorizing a charge for copying of public documents), we would conclude such charge is contrary to the public policy expressed in the Act. Henceforth, it is the view of this office that a government agency, including local boards of education, cannot refuse notice to any person on the basis of his or her failure or refusal to provide stationery and postage or pay charges.

"4. If the person making the request moves to another state, is the request still valid?"

The Act does not specifically address this question. However, the guidelines discussed above in response to your first question are applicable here. Although it might seem unlikely that a person now living in Hawaii would continue an interest in the local affairs of Unified School District No. 431, other factual situations are not so clear. Certainly, many Oklahoma residents maintain an interest in the affairs of the City of Coffeyville, Kansas. Frequently, newspapers, radio and television stations from beyond Kansas' borders have circulations and broadcast areas inside the state and therefore retain a significant interest in the governmental affairs of communities beyond their home state. In short, Kansas residency is not prerequisite to an interest in government activities, nor should it be prerequisite to the right to receive notice of public meetings. Naturally, such situations must be viewed on a case by case basis. An effort by the governing body or agency to ascertain a continued desire for notice by any person, regardless of residency, is the most practical and reasonable method to ensure compliance with the Act with minimum expense to the public entity.


"5. If the person making the request dies and no written request to not provide the notice has been received, does the request for notice remain valid?"

Once again, the Act does not address the issue of terminating a request for notice. However, as with our answers to your previous questions, common sense and substantial compliance are the best guidelines. We would advise that a requester's name may be removed from the notice list upon the death of the requester; however, when the requester represents an organization or association, as authorized by K.S.A. 1980 Supp. 75-4318(b), or represents a client, the notice should continue to be provided until a substitute can be named to receive notice. Annual or semi-annual updates of notice lists may be advisable and alleviate most of the concerns you have raised.

Norman L. Reynolds
Page Five
June 12, 1981

In sum, a request for notice of public meetings remains valid indefinitely, at least for a reasonable period of time. No written statement is required to withdraw a request for notice, although such written withdrawal would be advisable. No charge may be made for the providing of notice of public meetings. Requests for notice are to be honored regardless of residency of the requester. And the death of the requester permits the governmental unit to cease providing of such notice, except where the deceased person had requested notice as a representative of an organization or known individuals.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle