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ATTORNEY GENERAL OPINION NO. 81- 264

The Honorable Marci Francisco
Mayor
City of Lawrence
City Offices
Lawrence, Kansas 66044

Re: State Departments; Public Officers, Employees--
Open Meetings Law--Meetings With Special Interest
Groups

Synopsis: Prearranged gatherings of a majority of a quorum
of a city governing body with local special interest
groups may constitute meetings subject to the Kansas
Open Meetings Act when the purpose of the gathering
is the discussion of issues of concern to the governing
body. Cited herein: K.S.A. 75-4317, 75-4317a,
K.S.A. 1980 Supp. 75-4318, L. 1981, Ch. 344.

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Dear Mayor Francisco:

You inquire concerning application of the Kansas Open Meetings
Act, K.S.A. 75-4317 et seq., as amended by L. 1981, ch. 344
(hereinafter "Act"), to certain meetings of the Lawrence City
Commission. Specifically, you ask:

"Is there any problem with having two or more
Commissioners attending and participating in
a public forum such as a League of Women voters
function? Does it make any difference whether
those who had asked to be notified of all
City Commission meetings had been specifically
invited? If the press had been notified?"

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We presume from your question that members of the Lawrence City Commission may be invited by a local special interest group to attend a prearranged gathering for discussion of issues concerning the city and that a majority of a quorum of the commission will be in attendance. Were we to presume the commission members were members of the special interest group and were attending the gathering to discuss issues unrelated to city business, the Act would not apply. See, generally, Kan. Att'y Gen. Op. Letter to Ms. Patti Hackney, May 7, 1980 (copy enclosed). However, based on these assumptions, we call your attention to the definition of "meeting" in the Act and to previous opinions of our office concerning this issue.

K.S.A. 75-4317a defines "meeting" as "any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." In Kansas Attorney General Opinion No. 80-28, attached, this office concluded that the Kansas Open Meetings Act applied to meetings of a majority of a quorum of a school board when meeting to discuss local school issues with members of special interest groups. In that instance, the gathering had been organized by a private organization known as the Mexican-American Committee on Education. The opinion observed:

"The school board is, without question, a public body subject to the act. And it is evident from the situation you pose, that the purpose of this prearranged gathering is the 'discussion' of the issues and the 'conduct of the affairs' of the local educational system. Such matters are the business of the board. Thus, the only remaining question is whether the fact that the gathering was initiated by persons other than members of the board and that board members were invited to attend 'as individuals,' somehow takes the gathering outside the scope of the act. We do not believe such facts alter the essential nature of the meeting and as such the meeting remains subject to the open meetings law. :

. . . .

"We cannot agree that the fact that the meeting is requested and organized by persons other than the members of the board, alters the essential public nature of the meeting. Kansas law implies that meetings of public bodies subject to the

act may be called by 'persons' other than the presiding officer. See K.S.A. 1979 Supp. 75-4318(c). Note, however, the law does not authorize suit for civil penalties against non-members of the body. K.S.A. 75-4320. Were the mere identity of the persons arranging the gathering to be the determining factor, the Kansas open meetings law could be avoided at whim. Likewise, it is clear from your description of the situation, that the members are not being invited to attend the meeting strictly 'as individuals.' On the contrary, the school board members were invited to attend because they are school board members. Indeed, if school board members were attending simply as members of the 'public,' it would be difficult to understand how other members of the public and press would be excluded, hence there would be no question regarding a closed meeting." Id. at 3 and 4.

In another opinion concerning school boards the Attorney General concluded that the Act applied to meetings of the board of education with a group of teachers of the school district. Kan. Att'y Gen. Op. No. 80-43.

Luncheon meetings organized and sponsored by area chambers of commerce which included members of a city governing body have been held subject to the Act where matters concerning the city governing body are to be discussed. Kan. Att'y Gen. Op. No. 80-148. Accord, on similar facts, Sacramento Newspaper Guild v. Sacramento Co. Bd. of Super., 69 Cal. Rptr. 480 (1968).

Hence, we can only conclude that where members of the Lawrence City Commission are invited to attend a gathering of a private special interest group, such as the local chapter of the Kansas League of Women voters, for the purpose of discussing issues of concern to the city governing body, the meeting should be conducted in compliance with the notice and access requirements of K.S.A. 75-4317 et seq. In the words of your question, there is no "problem" with attending the public forums you describe, so long as the Kansas Open Meetings Act is honored. However, we feel constrained to note that the facts of each case will be determinative of whether a "meeting" was held; whether a violation has occurred; whether an action will be maintained or whether penalties and enforcement provisions are invoked. The Kansas Supreme Court has adopted the "substantial compliance" doctrine with regard to the Act, hence, mere technical violations may not be grounds for voiding of official action, other equitable

relief or the imposition of civil fines. See Olathe Hospital Foundation, Inc. v. Extendicare, Inc., 217 Kan. 546 (1975). As your hypothetical situation poses only a mere skeleton of the circumstances that may give rise to an actual or potential violation of the Act, our advice must be general and couched in the form of guidelines. Hence, we cannot, and will not, purport to dictate that all gatherings of members of government bodies with special interest groups will be viewed as "meetings" subject to the Act. The Act is not wooden and the factual variations are limitless. Yet, the potential for a violation of the Act is quite real where members of government bodies participate in discussion with special interest groups such as you describe. Members of government bodies would be well-advised to see that their participation in such events does not subvert the letter or spirit of the Act.

The remainder of your inquiry concerns notification of persons who have requested notice of meetings of the Commission and notice to the press. K.S.A. 1980 Supp. 75-4318 requires notice of regular or special meetings be given to any person requesting it. There is no requirement that the press be accorded special treatment, but if members of the news media have requested notice, they are legally entitled to such notice.

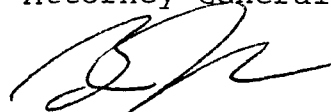
In addition to the notice requirement, the meeting must be open to the public as required by K.S.A. 1980 Supp. 75-4318. Your hypothetical situation describes the gathering as a "public forum," thus, we assume, open to the public. Specifically, however, a meeting "open to the public" would mean that no person may be excluded from the meeting for refusing to make a reservation or pay a fee. See Kan. Att'y Gen. Op. No. 80-148. Likewise, the meeting should not be held at a time or place so inconvenient or inaccessible to those desiring to attend as to be a "closed" meeting. See Smoot and Clothier Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241, 263 (1981).

Therefore, in our opinion, prearranged gatherings of a majority of a quorum of a city governing body with local special interest groups may constitute meetings subject to the Kansas Open Meetings Act when the purpose of the gathering is the discussion of issues of concern to the governing body.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General