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ATTORNEY GENERAL OPINION NO. 82- 133

Marci Francisco
Mayor
City of Lawrence
6 East Sixth
Lawrence, Kansas 66044

Re: State Departments; Public Officers, Employees --
Open Public Meetings -- Attending Retreats and
Conventions

Synopsis: The majority of a quorum of the governing body of a Kansas municipality may not conduct a retreat to the Colorado mountains to discuss the business or affairs of the body. Such gathering is unreasonably inaccessible to residents of the municipality and constitutes a meeting which is not open to the public in violation of the Kansas Open Meetings Act.

Members of a city governing body may attend and participate in annual conventions of the League of Kansas Municipalities, so long as members do not use such occasions to discuss among themselves the specific business or affairs of the body. Such discussion would subvert the purposes of the Kansas Open Meetings Act and should occur only at meetings held in strict compliance with the Act. Cited herein: K.S.A. 75-4317, K.S.A. 1981 Supp. 75-4318, K.S.A. 75-4320.

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Dear Mayor Francisco:

On October 28, 1981, you asked seven questions regarding the application of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. In a series of opinions we answered all but two of your questions. We delayed our response on these questions pending the outcome of a case appealed to the Kansas Supreme

Court captioned State, ex rel., Murray and Stephan v. Palmgren, et al., Case No. 53,612, challenging the constitutionality of the Kansas Open Meetings Act. In the opinion filed June 11, 1982, affirming the district court decision, the Court construed the statute "broadly in favor of the public to give effect to its specific purpose." Syl. ¶4.

Having before us the most recent judicial pronouncement on the subject we turn to your remaining questions.

You inquire as to the application of the Kansas Open Meetings Act (hereinafter "Act") to a retreat in the Colorado mountains involving the City Commission and the City Manager. Specifically, you ask:

"Would a retreat in the Colorado mountains for all five City Commissioners and the City Manager violate the Open Meetings Law if those who had asked to be notified of all meetings of the City Commission were invited to attend?"

You propose to provide requested notice and we presume that the gathering you envision in the mountains would fall within the definition of "meeting" in the Act, or in other words the retreat would:

- "(1) Be prearranged;
- "(2) consisting of a majority of a quorum;
- "(3) composed of the members of the body;
- "(4) for the purpose of discussing the business of affairs of the body or agency."

Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241, 258 (1981); Kansas Att'y Gen. Op. No. 81-262 (1981).

Hence, your question is whether such a meeting of the Lawrence City Commission in the Colorado mountains would be so inaccessible to the public as to not be "open" to the public within the meaning of the Act.

A Court of Appeals in Florida was confronted with a similar set of circumstances in the case of Bigelow v. Howze, 291 So. 2d 645 (Fla. App. 1974). The court, in construing the requirement of F.S.A. §286.011 that governmental meetings must be "public," held the meeting of the County Commission of Charolette County, Florida, was not in fact "public" because it was held in Tennessee. The Court added that "[r]egardless of the notice of the trip, a public meeting could not have feasibly been held . . . in Tennessee." (Emphasis added.) Id. at 647.

While Florida law requires meetings to be "public," our Act, at K.S.A. 1981 Supp. 75-4318, commands: "All meetings . . . shall be open to the public." (Emphasis added.) In a prior opinion of this office, No. 81-264, addressed to you, we noted that the broad language of the Kansas Act mandated that

"no person may be excluded from [a] 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, supra at 263." (Emphasis added.)

Without question, it would be inconvenient and expensive for those wishing to attend the meetings of the Lawrence City Commission to be forced to travel hundreds of miles to the Colorado mountains to attend such meetings. Such expense and inconvenience is an effective bar to attendance by most, if not all, Lawrence residents, the only class of citizens of the "public" at large keenly interested in the business and affairs of the city commission. Certainly, there are persons (members of the media, for example) whose financial interests might justify the added cost of attending meetings of the commission beyond Kansas borders. However, for the public, in general, for whose benefit this law was enacted, such meeting would deny the access to government permitted by the Act. In our judgment, the mere location of the meeting you describe would close the meeting just as effectively as slamming shut the door to your new city hall. Therefore, we conclude that, despite compliance with all procedural and notice requirements contained in the Act, a meeting of the Lawrence City Commission in the Colorado mountains is not a meeting "open to the public" within the meaning of K.S.A. 75-4317 et seq.

Finally, you inquire: "Can the majority of a quorum of the City Commission discuss general city business at a meeting such as the League of Kansas Municipalities annual convention?" Once again, we must make some assumptions regarding your question in order to respond. We will presume that the meeting you refer to is similar to those educational seminars frequently conducted by the League for officials of member cities. Our knowledge of such gatherings, including the format and public accessibility, suggests that attendance at such gatherings by members of the city commission is not per se a violation of the Kansas Open Meetings Act.

The subjects to be presented are of a general nature, purposely designed to appeal to the informational needs of the League's member cities. The lectures and discussions normally do not

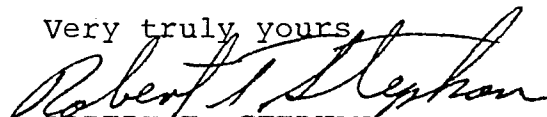
focus on a problem unique to the city of Lawrence. As such, they do not constitute "stages of the decision-making process." See Coggins v. Public Employee Relations Board, 2 Kan. App. 2d 416, 423 (1978).

Moreover, even if such gatherings were within the statute, certain factors mitigate against finding a per se violation. For example, seminars sponsored by the League are open to attendance by the press and public and the League holds its conventions within the borders of the state of Kansas, thus enhancing its accessibility to the citizens of the various Kansas municipalities whose officials are in attendance.

Having concluded, based on the above assumptions, that mere attendance of and participation in annual meetings of the League of Kansas Municipalities is not a per se violation of the Kansas Open Meetings Act, we must offer the following caveat: Use of such gatherings by a majority of a quorum of the city governing body to discuss among themselves the business and affairs of the city subverts the purposes of the Kansas Open Meetings Act and must be regarded as a violation thereof. Members of the city commission would be well-advised to refrain from discussing commission business among themselves while traveling to, attending or returning from such gatherings. These gatherings are not substitutes for the regular and special meetings of the commission. Issues debated and resolved among members in such a circumstance may subject any subsequent action of the body to the powers of the courts to void official action taken in violation of the Act. See K.S.A. 75-4320.

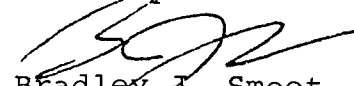
Therefore, it is our opinion, that the majority of a quorum of the governing body of a Kansas municipality may not conduct a retreat to the Colorado mountains to discuss the business or affairs of the body. Such gathering is unreasonably inaccessible to residents of the municipality and, therefore, constitutes a meeting which is not open to the public in violation of the Kansas Open Meetings Act. Members of a city governing body may attend and participate in annual conventions of the League of Kansas Municipalities, so long as members do not use such occasions to discuss among themselves the specific business or affairs of the body. Such discussion would subvert the purposes of the Kansas Open Meetings Act and should occur only at meetings held in strict compliance with the Act.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General