



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 82- 141

The Honorable Wendell E. Lady  
Speaker of the Kansas House  
8732 Mackey  
Overland Park, Kansas 66212

Re: State Departments; Public Officers, Employees --  
Kansas Open Meetings Act -- Notice of Interim Study  
Committees; Kansas Register

Synopsis: The Kansas Open Meetings Act requires notice of all regular and special meetings of bodies subject to the Act to be provided to all persons requesting it. Publication of notice of legislative interim study committees in the Kansas Register is adequate notice to those persons who subscribe to that publication. However, individual notice is still required for persons who do not subscribe to the Register. Absent changes in the law or the rules of the House and Senate, such persons may not be denied notice of interim study committees for failure to pay the subscription fee for the Register or mailing and postage charges arising from the providing of individual notice. Cited herein: K.S.A. 1981 Supp. 75-430 (as amended by 1982 House Bill No. 2717), K.S.A. 75-4317, K.S.A. 1981 Supp. 75-4318, 77-421 (as amended by 1982 House Bill No. 2712), L. 1981, ch. 324, §33.

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Dear Mr. Speaker:

As chairperson of the Legislative Coordinating Council, you request the advice of this office on the notice and agenda requirements of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Specifically, you inform us that the Council voted to discontinue the expensive practice of mailing notice and agenda of interim committee meetings and hearings to individuals who have requested such notification. In lieu thereof,

the council intends to rely upon the general publication notice available in the Kansas Register, which pursuant to K.S.A. 1981 Supp. 75-430(a)(6) (as amended by 1982 House Bill No. 2717), will publish "all notices of hearings of special legislative interim study committees." Unlike the previous practice of providing individual notice at public expense, the Kansas Register charges a subscription fee. Hence, the recent move is seen as a cost savings measure.

In this context you desire to know if the notice and agenda provided in the Kansas Register is sufficient to comply with the mandates of K.S.A. 1981 Supp. 75-4318. For the reasons discussed below, we are constrained to find that the Kansas Open Meetings Act requires the giving of individual notice (to any and all persons requesting it) of all meetings of legislative interim committees, and the notice provided in the Kansas Register in itself does not fulfill the statutory notice obligations.

Certainly the Kansas Open Meetings Act applies to legislative interim committees. K.S.A. 1981 Supp. 75-4318(a) states in pertinent part:

"Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, 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, commissions, 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 . . . ."

We note that the legislature is free to provide an exemption from the requirements of the Act with regard to any of its committee meetings, including interim study committees, but, to date, has not seen fit to do so except in circumstances covered by Kansas Senate Rule 23 discussed in Kansas Attorney General Opinion No. 81-26. Naturally, this office is not at liberty to comment on the advisability of such exemptions as they are matters of public policy clearly within the legislative prerogative.

With regard to the notice requirement, K.S.A. 1981 Supp. 75-4318(b) provides:

"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:

"(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." (Emphasis added.)

We think the command of this section is clear and unambiguous, requiring little comment except to note that the Act does not contemplate that notice may be denied for failure to pay a fee, postage or a subscription charge. As we concluded in Kansas Attorney General Opinion No. 81-137:

"The Kansas Open Meetings Act does not authorize any charge for the providing of notice. It only requires that such notice shall be provided.

. . . .

"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 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 the copying of public documents), we would conclude such charge is contrary to the public policy expressed in the Act." Id. at 3,4.

We reaffirm the above conclusion and find it applicable to meetings of legislative study committees. If the Kansas Register were provided at no expense to members of the public, the notice contained in its pages, when provided to those requesting it, would be adequate. However, requiring

persons to subscribe to the Register in order to receive such notice is contrary to law, since it erects a financial barrier to the receipt of notice. We can only presume that not all of the approximately 1350 persons who have requested and normally receive the notice of interim study committees are current subscribers to the Kansas Register. Those non-subscribers are entitled to individual notice of interim study committee meetings and hearings. However, we see no reason why the Council should require duplicate notice to subscribers of the Register where the notice provided therein is timely and accurately displayed. Of course, there may be administrative problems inherent in maintaining separate lists of subscribers and non-subscribers. For example, where subscriptions are discontinued or emergency meetings are called, the notice provided in the Register would be ineffective in providing the notice required by the Act. A determination to rely, in part, upon notice provided in the Register is an administrative decision beyond the scope of this opinion, but one which has obvious limitations.

In light of the above conclusion, there is little to add regarding your additional questions labeled (a) and (b), except to reaffirm our conclusion stated in Attorney General Opinion No. 137 that "a government agency . . . cannot refuse notice to any person on the basis of his or her failure or refusal to provide stationary and postage or pay charges." Absent a change in the Kansas Open Meetings Act or the amending of House or Senate Rules, such charges are impermissible.

We note in passing the possibility that the language of K.S.A. 1981 Supp. 75-430 as amended, acts as an implied repeal of the notice requirements of K.S.A. 1981 Supp. 75-4318. We offer little interest and space to this legal concept since the notice requirements of these two statutes are not inherently conflicting, nor do they require mutually exclusive courses of action. Only in the event that some subscribers to the Kansas Register have also requested notice of interim study committees is there any duplication of notice.

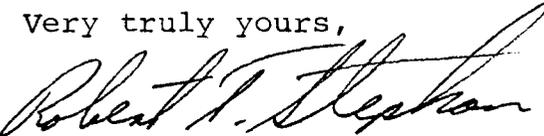
By way of contrast, we call the Council's attention to recent legislative changes in the notice requirements for state administrative rules and regulations. Prior to 1981, K.S.A. 77-421 required the giving of notice concerning the adoption of such regulations to "all parties of interest known to the state agency." In 1981 House Bill No. 2480, L. 1981, Ch. 324 §33, the legislature eliminated this language and substituted a reference to the Kansas Register. In 1982, the legislature further clarified the notice requirements for administrative regulations by declaring in 1982 House Bill No. 2712 that "[p]ublication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and

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regulations." No such explicit exception to the notice requirements of other statutes, specifically, K.S.A. 1981 Supp. 75-4318, has been made by the requirement for publication of interim study committee notices in the Kansas Register.

Finally, you inquire whether the Council may discontinue notice except to those who request (orally or in writing) that such notice continue to be sent. We believe this question is adequately addressed in Attorney General Opinion No. 81-137 (copy enclosed) which discussed at great length the issue of how long a request for notice remains valid. In light of this opinion, we think a proposal to update your mailing list by requesting those listed to advise of their continued interest in receiving notice is appropriate and lawful.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle

Enc.