



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. 83-125

The Honorable Max Moomaw  
State Representative  
One Hundred Seventeenth District  
R.R. 2, Box 45  
Dighton, Kansas 67839

Re: Townships and Township Officers -- Hospital Dis-  
tricts of Cities of Third Class and Townships --  
Election of Directors; Ballots

Synopsis: The public electors of a county hospital district  
operating pursuant to K.S.A. 80-2113 et seq., may  
elect the district board of directors by ballot  
without violating the Kansas Open Meetings Act.  
Cited herein: K.S.A. 75-4317, K.S.A. 1982 Supp.  
75-4318, K.S.A. 80-2113, 80-2118, 80-2119, 80-2121,  
Kan. Const. Art. 4, §1.

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Dear Representative Moomaw:

You have requested our opinion concerning the use of secret  
ballots by the Ness County Hospital District No. 2 patrons  
for the purpose of electing a hospital district board member.

We are advised that the district hospital is established and  
operates pursuant to K.S.A. 80-2113 et seq., and that pursu-  
ant to K.S.A. 80-2118 an annual meeting of the Ness County  
Hospital District No. 2 (herein referred to as District), was  
convened, being fully noticed to all district residents (K.S.A.  
80-2119). During this meeting two candidates were nominated  
to fill a board position and a motion to conduct the election  
by secret ballot was requested; the same being denied by the  
board chairman on the belief that use of secret ballots is  
prohibited by the Kansas Open Meetings Act (hereinafter KOMA).  
K.S.A. 75-4317 et seq. The chairman required a show of hands.

You inquire as to the applicability of the secret ballot pro-  
visions of the Kansas Open Meetings Act to hospital district  
residents in electing persons to the board of directors.


Although there is some question whether the KOMA should be applied to such district meetings since the meeting consists of members of the public electorate rather than elected or appointed officials, we find it unnecessary to make such determination in order to answer your inquiry.

K.S.A. 1982 Supp. 75-4318 provides that meetings of certain governmental bodies and agencies shall be open and that no binding action shall be taken by secret ballot unless "otherwise provided by state or federal law." K.S.A. 80-2121, the statute governing the election of district board members, provides that the election shall be made "by ballot." Hence, in our opinion, we have a specific statute which does provide "otherwise," and the proscriptions of the KOMA are inapplicable to this specific election of hospital district directors.

The election of the hospital board directors at such annual meetings of the hospital district is similar to a general election where electors cast their votes in the sanctity of the voting booth. The statutory requirement for use of a ballot suggests to us that the legislature intended the district electors to retain their traditional privacy as voters. Article 4, §1 of the Kansas Constitution requires that "all elections by the people shall be by ballot," and this requirement has been interpreted to imply secrecy in voting. See State ex rel. v. Beggs, 126 Kan. 811, 814 (1928) and Kan. Att'y Gen. Op. No. 79-167.

Hence, we believe the requirements of K.S.A. 80-2121 are controlling with regard to the voting method used in hospital district meetings and that a secret ballot is required to be cast by the electors rather than a show of hands. Therefore, it is our opinion that the public electors of a county hospital district operating pursuant to K.S.A. 80-2113 et seq., may elect the district board of directors by ballot without violating the Kansas Open Meetings Act.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle