



STATE OF KANSAS

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August 8, 1984

ATTORNEY GENERAL OPINION NO. 84- 81

The Honorable Michael L. Johnston
State Senator, Fourteenth District
3610 Gabriel, No. 237
Parsons, Kansas 67357

Re: State Departments; Public Officers, Employees -- Open
Public Meetings -- Committees and Subordinate Groups;
Advisory Committees Subject to Act

Synopsis: Advisory committees appointed by a body subject to the
Kansas Open Meetings Act, K.S.A. 75-4317 et seq., are
themselves subject to the act, even though the advisory
committee neither receives nor expends public funds,
and is not supported in whole or in part by public
funds. As such committees participate in the decision-
making process by gathering information, evaluating
options, and making recommendations to the governing
body, they participate in "the conduct of the affairs
of" the governing body, and so are covered by the scope
of K.S.A. 1983 Supp. 75-4318(a). Cited herein: K.S.A.
75-4317, K.S.A. 1983 Supp. 75-4318.

* * *

Dear Senator Johnston:

As State Senator for the Fourteenth District, which consists of
Labette County, as well as portions of Crawford, Montgomery and
Neosho Counties, you request our opinion on a question involving
the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. You inform
us that a school district board located in your district has in
the past appointed advisory committees to advise the board on
such matters as facilities planning. These committees, which

are appointed by the board, consist of members of the public and some members of the board, and are charged with developing recommendations to bring back to the school board for the latter's consideration and possible approval. Moreover, the superintendent of the district also appoints advisory committees made up of district employees, members of the public and an occasional board member to advise him on relevant matters concerning school operations. You ask whether the meetings of either of the above types of committees are subject to the act.

In pertinent part, the Kansas Open Meetings Act states:

". . . all meetings for the conduct of the affairs of, or 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" K.S.A. 1983 Supp. 75-4318(a).

In determining whether a particular public body falls within the scope of the Act, the Kansas Supreme Court has adopted the following test, which was enunciated by Smoot and Clothier in their article, Open Meetings Profile: The Prosecutor's View, 20 Washburn Law Journal 241 (1981):

"First the group of people meeting together must be a "body or agency" within the meaning of the Act. Second, the group must have legislative or administrative powers or at least be legislative or administrative in its method of conduct. Third, the body must be part of a governmental entity at the state or local level, whether it is the governing body or some subordinate group. Fourth, it must receive or expend public funds or be a subordinate group of a body subject to the Act. Finally, it must be supported in whole or in part by public funds or be a subordinate group of a body which is so financed." 20 Washburn L.J. at 256-57." State ex rel. Murray v. Palmgren, 231 Kan. 524, 535 (1982).

The court further held that, as long as the parent body, whether state or local, met the test of being supported by public funds, all subordinate groups of that body were automatically covered by the Act, regardless of whether they also received or spent public funds. Palmgren, supra, at Syllabus ¶9.

Initially, it is our opinion that the types of advisory committees contemplated here are clearly involved, at least to some degree, with the conduct of the affairs of the school district. We are informed that the duties of the committees in question include giving advice to the board and the superintendent on subjects which are contemplated for future study or action. In that a portion of the decision-making process, albeit an early one, is the weighing of various courses of action to eliminate those which are clearly unfeasible or undesirable, to the extent that this is done by an advisory committee, such a group is involved in the conduct of the business of the district. Palmgren, supra, at 535.

Though it may be argued that advisory committees are not themselves legislative or administrative bodies or agencies, most authority leads to the conclusion that groups subordinate to legislative or administrative bodies or agencies are also covered by the statute. Citing Johnson v. Killion, 178 Kan. 154, 158, (1955), the court in Palmgren stated "it is fundamental that where a statute is designed to protect the public, the language must be construed in the light of the legislative intent and purpose and is entitled to a broad interpretation so that its public purpose may be fully carried out." 231 Kan. at 530. The purpose underlying the Kansas Open Meetings Act is to make meetings for the conduct of governmental affairs and the transaction of governmental business open to the public so as to strengthen our representative government which is dependent upon an informed electorate. K.S.A. 75-4317(a). "If those committees or groups . . . are exempt from the coverage of the statute, all meaningful discussion and debate of government business, to which the people would otherwise have access, could be carried on in the shadows of secrecy. Obviously, such a construction could be used to defeat or subvert the purpose of the Act." Att'y Gen. Op. No. 80-201. In Coggins v. Public Employee Relations Board, 2 Kan.App. 2d 416, 423, (1979), the court concluded that the "term [meeting] includes all gatherings at all stages of the decision-making process." Thus, if the school board and the superintendent are legislative or administrative bodies or agencies covered by the Act, then their subordinate committees would be covered as well.

There is little doubt that the school district board is such a body; its functions are administrative and it is funded by the public. The office of superintendent, on the other hand, presents a more difficult problem. It has been observed that "the Act has been applied only to groups of persons who exercise authority as a 'body' and not to subordinate staff personnel who gather together but do not take collective action." Smoot and Clothier, 20 W.L.J. at 250. A school superintendent does not, however, merely glean advice and recommendations from a committee for his own personal information and benefit. He may use such ad-

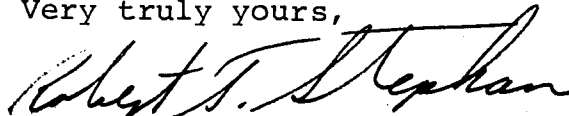
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vice and recommendations to form an opinion which will eventually be carried into action. The superintendent together with his committee form a body and, according to Coggins, supra, the meetings leading to his final decision should thus be covered by the Act.

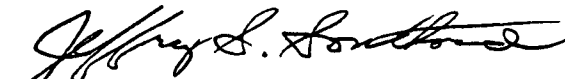
Finally, the statute requires that, in order for the committees to come under its provisions, they must receive or expend and be supported in whole or in part by public funds. As noted, Palmgren held that subordinate groups, regardless of the degree or existence of public funding directly to them, were nonetheless covered by the Kansas Open Meetings Act if their parent body met the public funding test, assuming all other requirements were met. See also, Att'y Gen. Op. No. 80-201. The board of education and school superintendent receive and are supported in part by public funds. Their committees would thus meet this requirement as well.

In conclusion, advisory committees appointed by a body subject to the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., are themselves subject to the act, even though the advisory committee neither receives nor expends public funds, and is not supported in whole or in part by public funds. As such committees participate in the decision-making process by gathering information, evaluating options, and making recommendations to the governing body, they participate in "the conduct of the affairs of" the governing body, and so are covered by the scope of K.S.A. 1983 Supp. 75-4318(a).

Very truly yours,



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Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw