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October 3, 1984

ATTORNEY GENERAL OPINION NO. 84- 103

John J. Gillett
Wilson County Attorney
Wilson County Courthouse, Room 201
Fredonia, Kansas 66736

Re: State Departments; Public Officers, Employees -- Kansas Open Meetings Act -- Joint Meetings Between Governing Bodies Subject to Act

Synopsis: A meeting called by the mayor of a city would not come under the scope of the Kansas Open Meetings Act if it were attended by single representatives from other governing bodies, along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4318. Likewise, the restrictions on executive sessions would apply, with such sessions permitted only for the discussion of those topics specified in K.S.A. 75-4319. However, if members of the media are allowed to sit in on such executive sessions to the exclusion of members of the general public, the sessions cease to be closed, with admittance of anyone required. Cited herein: K.S.A. 75-4317, 75-4317a, K.S.A. 1983 Supp. 75-4318, 75-4319.

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Dear Mr. Gillett:

As County Attorney of Wilson County, Kansas, you request our opinion on a question which has recently arisen involving the

Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Specifically, you inform us that the Mayor of Fredonia has scheduled a "visiting-planning meeting concerning the health-care needs for Wilson County and the surrounding area" for October 11, 1984. Attendance is by invitation only, with such invitations going out to the Wilson County Commission, the Neodesha City Council, community hospital representatives, local doctors, as well as the remainder of the Fredonia City Commission and single representatives from smaller cities in Wilson County. You express concern that the meeting as it is presently set will be in conflict with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., and accordingly request our prospective opinion so as to avoid any possible violation.

Enacted in 1972, the Kansas Open Meetings Act (KOMA) is intended to insure that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public. K.S.A. 75-4317, State ex rel. Murray v. Palmgren, 231 Kansas. 524, 534 (1982). K.S.A. 75-4317a defines "meeting" as follows:

"As used in this act, 'meeting' means 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."

Thus, for a gathering of the members of a given governmental body or agency to be subject to the Act, it must meet at least three prerequisites:

- 1) The meeting must be "prearranged." Chance encounters of members of any government board, commission, council or similar legislative or administrative entity will not constitute a "meeting" subject to the requirements of the open meetings act. See Attorney General Opinion No. 81-262.
- 2) The number of members attending the gathering must be at least equal to a majority of a quorum. For example, two of the members of a five-member commission (a quorum of which is three) would be sufficient to satisfy this requirement. For a county commission, a meeting of any two members would be enough.
- 3) The gathering must be for the purpose of "discussing the business or affairs of the body or agency." While K.S.A. 1983 Supp 75-4318 was earlier

construed by this office to require the actual transaction of business before the KOMA could be invoked, subsequent opinions following the addition of K.S.A. 75-4317a (in 1977) have not adopted this position. See Attorney General Opinion No. 80-197, where "work sessions" of a city council were held to fall within the KOMA. See also Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416 (1978), where the court held (at 423) that the term "meetings" includes "all gatherings at all stages of the decision-making process."

It may be observed that the gathering called for October 11, 1984, does not itself constitute an entity subject to the KOMA. Without any name, statutory basis, independent existence or duties or responsibilities, the group can only discuss health-care concerns and, if desired, make recommendations. Further, it neither receives, expends or is supported by public funds. In the absence of any other factors, then, the meeting would not be subject to the KOMA. Attorney General Opinion No. 84-10. Such would be the case, for example, if only a meeting of mayors and health officials was contemplated.

However, the inclusion of the entire city governing bodies of Fredonia and Neodesha, in addition to the Wilson County Commission and the governing board of the hospital district, has the effect of triggering the provisions of the KOMA. If a majority of a quorum of even one governing body or government agency is present, the statutes require the meeting to be open (except in the case of executive sessions discussed below), regardless of who else is present. This result has been reached in at least two prior opinions of this office.

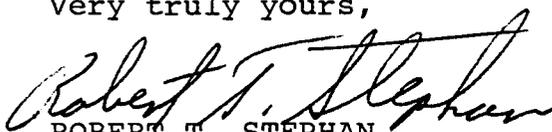
In Attorney General Opinion No. 80-148, a question was raised concerning monthly luncheon meetings which were held between the Chanute City Commission, the Neosho County Commission, the Chanute Chamber of Commerce and a development company. Although no binding action was or in fact could be taken, under K.S.A. 75-4317a and the holding in Coggins, supra, the discussions were subject to the KOMA and had to be open, with the public allowed to attend at no charge. Similar facts were present in Attorney General Opinion No. 81-264, where a majority of a quorum of the Lawrence City Commission wished to participate in a public forum presented by the League of Women Voters. In that the commissioners were attending in their official roles and not as members of the league or mere observers, the requirements of the KOMA, including notice, needed to be met. The fact that the forum had been called by a group separate from the commission was held to be of no consequence.

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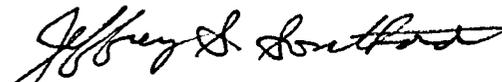
Therefore, we would agree with your conclusion that the meeting set for later this month is in violation of the KOMA as things now stand. The meeting must either be limited to one representative from each governmental unit (thus avoiding the problem with a majority of a quorum being present) or the meeting must be open to the public. Further, it is our opinion that merely allowing members of the news media to be present would not cure the defect. Indeed, by opening a meeting to a segment of the public, a governing body may lose even the ability to conduct executive sessions. Only if persons are giving information or participating in deliberations can a closed meeting be held to as to exclude other members of the public. Attorney General Opinion No. 82-176. In any event, in reviewing the six subjects which may be discussed in executive session [as set out in K.S.A. 1983 Supp. 75-4319(b)], we do not believe that the discussions at the forthcoming meeting will encompass any of the specified topics. The meeting may therefore not be closed to the public, regardless of whether the media are allowed to be present.

In conclusion, a meeting called by the mayor of a city would not come under the scope of the Kansas Open Meetings Act if it were attended by single representatives from other governing bodies, along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4319. Likewise, the restrictions on executive sessions would apply, with such sessions permitted only for the discussion of those topics specified in K.S.A. 75-4319. However, if members of the media are allowed to sit in on such executive sessions to the exclusion of members of the general public, the sessions cease to be closed, with admittance of anyone required.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw