



STATE OF KANSAS

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November 12, 1985

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ATTORNEY GENERAL OPINION NO. 85- 156

The Honorable Charles F. Laird
Representative, Fifty-Ninth District
3501 Shawnee Court
Topeka, Kansas 66605

Re: Laws, Journals and Public Information -- Records
Open to Public -- Access to City Department Reports

Synopsis: The Kansas Open Records Act, K.S.A. 1984 Supp.
45-215 et seq., is not violated by a public
agency's refusal to allow public access to certain
reports upon their compilation. However, access
must be granted when such reports are reviewed in
an open meeting or distributed to a majority of a
quorum of that agency's subcommittee. Cited
herein: K.S.A. 1984 Supp. 45-217; 45-221; K.S.A.
75-4318(a), as amended by L. 1985, ch. 284, §1.

* * *

Dear Representative Laird:

As State Representative for the 59th District, you request our interpretation of the Kansas Open Records Act, K.S.A. 1984 Supp. 45-215 et seq. (KORA). You advise that a subcommittee of the Topeka City Council requested that certain city departments prepare reports concerning the impact of proposed annexation on their operations. A request for public access to these reports "upon publication" was denied, although the subcommittee indicated its willingness to allow public access to contents of the reports at some later date. You inquire whether this denial violates the spirit and intent of the KORA.

The KORA clearly establishes that, unless otherwise specifically provided by law, records maintained by public agencies in this state are to be open for public inspection and, if desired, copying. "Public record" is defined in K.S.A. 1984 Supp. 45-217(f) (1) as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." "Public agency" in turn is defined in K.S.A. 1984 Supp. 45-217(e) (1) as "the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof." Clearly, the Topeka City Council and its subcommittees fall within the definition of a public agency. Accordingly, records in the possession of the council's subcommittee would constitute public records.

K.S.A. 1984 Supp. 45-221 contains exceptions to this general "openness" policy and provides that a public agency shall not be required to disclose records which fall into one of thirty-five enumerated categories. The statute does not prohibit disclosure of records which fall within an exception, but leaves the decision to disclose to the agency's discretion.

Three separate provisions of K.S.A. 1984 Supp. 45-221(a) may serve as a basis for the exercise of such discretion by the subcommittee of the city council. They state as follows:

"(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

"(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

"(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

"(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

"(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

"(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

"(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain." (Emphasis added.)

In our opinion, the reports compiled by various city departments for the subcommittee of the city council constitute memoranda or other records in which opinions are expressed, records of a public agency having legislative powers which records pertain to proposed legislation, or records of a public agency having legislative powers which records pertain to research prepared for one or more members of the agency.

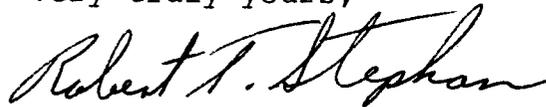
It should be emphasized that none of the above exceptions applies if the records are "publicly cited or identified" in an open meeting or in an agenda of an open meeting. K.S.A. 1984 Supp. 45-221(b) states that the term "publicly cited or identified" "shall not include a request to an employee of a public agency that a document be prepared." Although the police and fire departments are not "employees" of the Topeka City Council, we believe the term "cited or identified" should not be read to include the subcommittee's request that various departments prepare reports concerning the impact of proposed annexation upon their operations. Because the information is merely requested and is not yet recorded, the reports are not yet "made, maintained or kept by" or "in the possession" the council or its subcommittee. Accordingly, although the subcommittee meeting is an open meeting [see K.S.A.

75-4318(a), as amended by L. 1985, ch. 284, §1], the reports prepared by various city departments have not yet been "distributed" or "publicly cited or identified" in an open meeting, and the council may decline to allow inspection of such reports pursuant to paragraph (20), (21) or (22) of K.S.A. 1984 Supp. 45-221.

We assume that the subcommittee in question has authority to take action or make recommendations to the city council regarding annexation. If so, members of the public who make a request under KORA must be granted access to the reports in question when those reports are distributed to a majority of a quorum of the subcommittee. See K.S.A. 1984 Supp. 45-221(a) (21) (B) and (a) (22) (B).

In conclusion, the council acted within its discretion in denying your request for access "upon publication" of the reports in question. However, such reports become open to public inspection upon request when reviewed in an open meeting, either of the council or the subcommittee, or distributed to a majority of a quorum of either body.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Kathryn Gardner
Assistant Attorney General

RTS:JSS:KG:crw

cc: Ed Johnson, City Attorney, Topeka