



STATE OF KANSAS

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March 7, 1986

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ATTORNEY GENERAL OPINION NO. 86- 33

Dennis W. Moore
District Attorney
Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: State Departments; Public Officers and Employees --
Public Officers and Employees -- Open Public
Meetings -- Executive Meetings; Subjects to be
Discussed

Synopsis: K.S.A. 75-4319 provides that any motion to recess
for a closed or executive session must include a
statement of both the justification for closing the
meeting and the subjects to be discussed. A public
body adjourning to executive session pursuant to
the exception for "personnel matters" must specify
the subject to be discussed with a reasonable
degree of specificity, although identification of
the particular individual or individuals involved
need not be made. Cited herein: K.S.A. 75-4317;
75-4319.

* * *

Dear Mr. Moore:

As District Attorney for Johnson County, Kansas, you request
our opinion on a question concerning the Kansas Open Meetings
Act (KOMA), specifically K.S.A. 75-4319. It is your opinion
that when a public body subject to the Act employs K.S.A.
75-4319(b)(1) to recess to executive session, the motion
should include the statutory justification for closing the

meeting and, in addition, the name or names of individuals who are the subject matter of the executive session. Alternatively, you note that K.S.A. 75-4319 is also being interpreted to mean the "subject" to be discussed during during a closed or executive session is equivalent to the justification for the closed or executive session found at K.S.A. 75-4319(b)(1-6). This interpretation would allow a board or agency to recess to executive session under the personnel exception without stating anything further than the justification for the closed session, i.e. "personnel matters."

K.S.A. 75-4319 sets forth the procedure by which a public body subject to the Kansas Open Meetings Act may recess to executive session. The statute provides, in part, as follows:

"(a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

"(b) No subjects shall be discussed at any closed or executive meeting, except the following: (1) Personnel matters of non-elected personnel;" (Emphasis added.)

The "personnel matters" exception to KOMA was drafted to protect the privacy of employees, save personal reputations and encourage qualified people to select and remain in the employ of government. Smoot & Clothier, 20 Washburn Law Journal 241, 275 (1981). It is clear that the sole purpose for the personnel exception is to protect individual privacy. Further, it is likely that such purpose would be violated if the name or names of the individuals to be discussed in the executive session were revealed.

While K.S.A. 75-4319(a)(2) indicates that a motion to recess to a closed or executive meeting must include a statement of the subjects to be discussed, the statute does not indicate that the identity of the person to be discussed must be included in that motion. K.S.A. 75-4319 must be construed to preserve a balance between the public interest in disclosure and the privacy and reputation interests of the affected individuals. The procedural aspects for convening a private session effectively carry forward the purposes of KOMA while protecting such interests. The provisions included in K.S.A. 75-4319(b)(1-6) which allow a public body to discuss public matters out of the general public's eye must be strictly construed in order to avoid a nullification of the intent of the legislature expressed at K.S.A. 75-4317. Therefore, it is important that KOMA be construed in favor of the public to give effect to its specific remedial purposes, [State ex rel. Murray v. Palmgren, 231 Kan. 524 (1982)].

In Rice v. Union County Regional High School Board of Education, 382 A.2d 386 (N.J. 1977), the court determined that a board of education fully complied with the New Jersey Public Meetings Act in adopting a resolution pertaining to personnel matters, calling for an executive session where:

"the public was fully aware of the nature of the personnel matters to be discussed, and where it was announced to the public that any decision reached would be made known to the public when action was formally taken on it. . . . The necessity for a reduction in the number of employees was a matter of common knowledge as a result of the meetings and discussions that had occurred over the preceding weeks in various public meetings." (Emphasis added.)

N.J.S.A. 10:4-13 provides:

"No public body shall exclude the public from any meeting to discuss any matter described in subsection 7.b [Section 10:4-12b.] until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted:

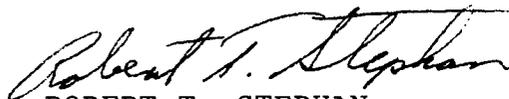
"a. Stating the general nature of the subject to be discussed; and b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of

the public body can be disclosed to the public." (Emphasis added.)

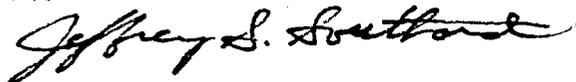
The decision in Rice demonstrates that the names of the individuals need not be revealed. However, in our opinion a public body adjourning to executive session must do more than cite the "personnel exception" as the subject to be discussed in executive session. For example, while a Kansas school board meeting in an executive session for the purpose of discussing possible disciplinary action or dismissal of a school district employee must include in the motion to recess the "subjects" to be discussed pursuant to K.S.A. 75-4319 with a further delineation of the nature of the personnel matters to be discussed (i.e., disciplinary action of a school district employee; complaint regarding disciplinary action taken by elementary school teacher), although naming the individual involved is not required. A contrary reading (i.e. that no mention of the subject matter is needed) would render a portion of the statute meaningless, a result which in construing statutes is to be avoided. American Fidelity Insurance Co. v. Employers Mutual Casualty Co., 2 Kan.App.2d 245 (1979). Other examples for other governmental units may be devised as well.

In conclusion, K.S.A. 75-4319 provides that any motion to recess for a closed or executive session must include a statement of both the justification for closing the meeting and the subjects to be discussed. A public body adjourning to executive session pursuant to the exception for "personnel matters" must specify the subject to be discussed with a reasonable degree of specificity, although identification of the individual or individuals involved need not be made.

Very truly yours,



ROBERT T. STEPHAN
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Jeffrey S. Southard
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