



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 84

Joseph O'Sullivan
Reno County Counselor
315 West First Street
P.O. Box 2066
Hutchinson, Kansas 67504-2066

Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Bodies Subject Thereto; Advisory Committees to
County Fire Districts

Synopsis: An advisory board to a county fire district
appointed by the board of county commissioners, the
governing body of the district, is a subordinate
group subject to the Kansas Open Meetings Act
because the parent body is an administrative body
which receives and expends public funds. Cited
herein: K.S.A. 19-3601; 19-3601a; 19-3601b;
75-4317; K.S.A. 1985 Supp. 75-4318.

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Dear Mr. O'Sullivan:

As county counselor for Reno County, you request our opinion concerning the applicability of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., to advisory boards of county fire districts. You inform us there are ten rural fire districts in Reno County organized according to K.S.A. 19-3601 and that, pursuant to statute, the Reno County Board of Commissioners is the governing body of each district.

You also inform us that for each fire district the Board of County Commissioners has appointed an advisory board which is

representative of the various townships in each district "for the sole purpose of offering advice and counsel to the Board of County Commissioners with respect to the level of fire protection services needed or desirable in each district." You state that the appointed fire chief in each district reports directly to the Board of County Commissioners and that the fire chief may meet on occasion with the district's advisory board "for informational purposes."

A resolution representative of several passed by the Board of County Commissioners with respect to the various fire districts was submitted for our examination. The resolution states that an advisory board is established "for the purpose of offering advice and recommendations to the Board of County Commissioners concerning matters of fiscal operation and management, and other such matters as directed by the Board of County Commissioners." The resolution also provides that the board "shall have no legislative or administrative duties, and shall not be supported or compensated by public (tax) revenues."

The legislative declaration of policy underlying the Kansas Open Meetings Act is set out at K.S.A. 75-4317(a):

"In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

K.S.A. 1985 Supp. 75-4318 defines the scope of the act as follows:

"[A]ll meetings for the conduct of the affairs of, and 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"

The above language sets forth a two-part test which must be met for a body to be included within the act's provisions: (1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions, or is subordinate to such a body; and (2) the body receives, expends, or is supported in whole or in part by public funds, or, in the case of subordinate groups, has a parent or controlling body which is so supported.

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).

Using the above analysis, it is your opinion that the advisory boards to the fire districts are not subject to the open meetings laws because they are not administrative or legislative bodies.

The question whether groups subordinate to public bodies are subject to the KOMA was addressed in State ex rel. Murray v. Palmgren, 231 Kan. 524 (1982). In that case the county commission appointed the county hospital board of trustees. Appellants argued the KOMA was vague because it was unclear whether "the board of trustees of a county hospital, must receive and expend public funds themselves to be included in the act or whether it is enough that only the parent body, such as the board of commissioners, receive and expend public

funds." 231 Kan. at 53. The Kansas Supreme Court ruled that, as long as the parent body 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.

In Attorney General Opinion No. 83-38 we were asked whether a board of trustees of a city hospital organized through private donations was subject to the Act. Based on the court's analysis in Palmgren, 231 Kan. 524, we opined that, since the board of trustees were appointed by the city council, the board was a subordinate group of a legislative body which received and expended public funds and was therefore subject to the KOMA.

In the situation you present for our opinion, the Reno County Commissioners receive and expend public funds in performing the duties as the governing body of each county fire district. See K.S.A. 19-3601b. You agree that a subordinate body does not itself need to receive or expend public funds to be subject to the KOMA. You contend, however, that the open meetings laws are not applicable to a fire district advisory board because this subordinate group does not meet the requirement of being a legislative or administrative body.

In Attorney General Opinion No. 84-81 we were asked whether the KOMA was applicable to an advisory committee appointed by a board of education. In that opinion we pointed out that the court in Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416, 423 (1979), found that the "term [meeting] includes all gatherings at all stages of the decision-making process." In concluding that the advisory committee was subject to the KOMA, we stated:

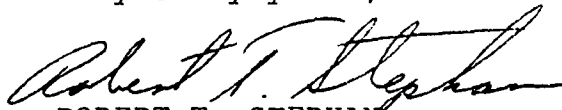
"Advisory committees appointed by a body subject to the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., are themselves subject to the act, even though the advisory committee neither receives nor expends public funds, and is not supported in whole or in part by public funds. As such committees participate 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)."

Therefore, as long as the parent body receives or expends public funds and performs duties that are administrative or legislative in nature, an advisory board to that body is automatically subject to the KOMA even though the advisory board is not an administrative or legislative body or agency or does not receive or expend public funds.

In conclusion, members of advisory boards to the rural fire districts in Reno County are appointed by the Board of County Commissioners. In offering advice and making recommendations to the county commissioners, members of an advisory board participate in "the conduct of the affairs of" the governing body. The Board of County Commissioners as the governing body of each district acts administratively in carrying out the duties prescribed by statute. See K.S.A. 19-3601a. Therefore, an advisory board to a fire district is a subordinate group of an administrative body which receives and expends public funds. Since both parts of the test provided in K.S.A. 1985 Supp. 75-4318 are met, we must conclude that such an advisory board is subject to the KOMA.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Rita L. Noll
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