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June 17, 1986

ATTORNEY GENERAL OPINION NO. 86- 92

Timothy J. Chambers  
Reno County Attorney  
Law Enforcement Center  
210 West First Street  
Hutchinson, Kansas 67501

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

Synopsis: The Hutchinson city manager acted as an individual, and not as a committee subordinate to the city commission, in recommending an applicant for the job as engineering consultant. While three city employees chosen by the city manager to assist in the selection process were designated as the "Consultant Selection Committee," it is the nature of a group, and not its designation, which determines whether it is subject to the KOMA. In our opinion, this "committee" is not a body required to have open meetings. The individuals assisted the city manager by lending their expertise and providing information, but they did not, as a group, make any collective decisions. Since the "committee" did not have any decision-making authority, the Hutchinson city manager acted alone and thus is not a public "body" for purposes of the open meetings laws. Cited herein: K.S.A. 75-4317; K.S.A. 1985 Supp. 75-4318.

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Dear Mr. Chambers:

As county attorney for Reno County, you request our opinion regarding whether a group of employees formed to aid in the selection of a professional engineering consultant is a public body subject to the provisions of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq. We are informed that to get a construction project for the city of Hutchinson underway, the Hutchinson city manager appointed three city employees, the city engineer, assistant city engineer, and city director of public works, to assist him in interviewing and recommending to the city commission an engineering consultant for the project. We are also informed that it is the city manager's duty to interview and recommend persons for positions and that the city manager was not directed by the city commission to form a selection committee. You state that five persons applied for the engineering consultant job, all were interviewed, and one was recommended to the city commission for the position.

The Kansas Open Meetings Act provides that it is "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. 75-4317. K.S.A. 1985 Supp. 75-4318 defines the scope of the act:

"[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.

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 Kansas Supreme Court ruled that, as long as a parent body meets the test of being supported by public funds, all subordinate groups of that body are automatically covered by the Act, regardless of whether they also receive or expend public funds. See Attorney General Opinion No. 83-38. Accordingly, in a recent opinion by this office we stated that as long as the parent body is administrative or legislative body, all subordinate groups of that body are subject to the KOMA even though the subordinate group does not perform administrative or legislative functions. Attorney General Opinion No. 86-84. It is clear that a city commission meets both tests of K.S.A. 1985 Supp. 75-4318 and is a public body subject to the open meetings laws. Therefore, if the "consultant selection committee" is a subordinate body to the Hutchinson city commission, the committee must conduct its meetings in accordance with the open meetings laws.

In your opinion the KOMA does not apply because the committee was a group of employees that provided information to the city's governing body. Smoot and Clothier in their article, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.M. 241, 250 (1981), stated as follows:

"[T]o be subject to the Kansas Open Meetings Act the person or persons in question must constitute a body or agency. These terms, when read in conjunction with the definition of 'meeting,' suggest persons who exercise their authority individually are not within the scope of this Act.

". . . [T]he 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."

See Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State?, 25 Kan. L. Rev. 169, 188 (1977). The

mere fact that the committee was composed of only city employees , however, does not mean that the group is exempt from the act. It is the actual functions to be performed by the group, not the make-up of the group, that determines whether the meetings must be open to the public. See Smoot and Clothier, supra, at 251; Cape Publications, Inc. v. City of Palm Bay, 473 So.2d 222, 225 (Fla.App. 1985). If the Hutchinson city employees in question take collective action and are a subordinate body to the city commission, the KOMA is applicable.

In Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416, 423 (1979), the court found that the "term [meeting] includes all gatherings at all stages of the decision-making process." In accordance with the broad definition of "meeting" and the liberal interpretation to be given to the act, this office has opined that an advisory board to a rural fire district and an advisory committee to a board of education were public bodies required to have open meetings. Attorney General Opinion Nos. 86-84, 84-81.

"As [advisory] 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)." Attorney General Opinion No. 84-81.

The present situation can be distinguished in that the committees in the above-referenced opinions were appointed by the parent body while the Hutchinson city employees were not appointed by the city commission. The means by which the consultant selection committee was formed, however, is of no consequence if the committee as a whole is responsible to the city commission.

While Kansas has no applicable case law, the fact situations of two decisions from other jurisdictions are similar to the situation submitted for our opinion. In Krause v. Reno, 366 So.2d 1244 (Fla.App. 2979), the city manager appointed four private citizens to assist him in selecting a police chief. The committee of four screened all the applications, interviewed fifteen they decided were the best qualified, and

selected four applicants from which the city manager appointed the police chief. The court ruled that the selection committee was subject to the provisions of the open meetings law. The key to the court's decision was that the committee in its process of elimination and reducing the number of applicants to a recommended few from which the police chief was chosen, was an integral part of the decision-making process. Because the committee was involved in this manner, the city manager and the persons he selected to assist him became a body subject to the Florida Sunshine Laws.

A similar situation yielded a different result in Cape Publications, Inc. v. City of Palm Bay, 473 So.2d 222 (Fla.App. 1985). In that case the city manager, whose duty it was to select the new police chief, reviewed the applications and selected three for interviews. The city manager then asked certain people to sit in with him during the interviews. Those persons included the city personnel director, the city attorney, a member of the Florida Department of Law Enforcement, and a deputy police chief. The court found the role of the "selection committee" to be as follows:

"The sole function of the group was to sit in when the city manager interviewed the applicants he had selected, to ask questions of a technical nature such as would help the city manager better understand the qualifications of the applicant, and to offer such comments to the manager as they deemed pertinent on the qualifications of the applicants. The record supports the City's position that the city manager screened all applicants, determined who would be interviewed, established the procedures for the interviews, was present during each interview, would decide which applicant to further interview, and would ultimately select the new police chief. The group was delegated no authority; they did not select or screen applicants, and they were not authorized or delegated the responsibility of making recommendations. Their sole function was to assist the city manager in acquiring information by asking

questions during the interviews and then discussing with the city manager the qualifications of each candidate after the interview . . . ." 473 S.2d at 222.

The court distinguished this case from Krause v. Reno, supra, and held that the group assisting the city manager was not a body required to be open to the public. In Krause a portion of the decision-making authority was delegated to the committee; the committee screened and interviewed the applicants and selected a few from which the city manager made the selection. In City of Palm Bay, the advisory group assisted in the interviews and discussed the candidates with the city manager, but did not have any decision-making authority.

In the situation submitted to us it was the city manager's duty to recommend a person as an engineering consultant. The city manager chose the head of the department in charge of the construction project, the city engineer, and the assistant city engineer to assist him in the selection process. Obviously, these individuals were selected for their expertise and the technical advice they could offer as to the qualification of the applicants. While the group in City of Palm Bay assisted only in interviewing, we are informed that the "consultant selection committee" participated in all steps of the process. The committee's participation in this case, however, is different than in Krause where the committee members, and not the city manager, did the screening and interviewing and narrowed the applicants down to four. In the present case, decision-making authority was not delegated to the committee. The city manager sought and received assistance and input from the group during the process, but the committee did not make any collective decisions and the decision as to which applicant to recommend rested with the city manager.

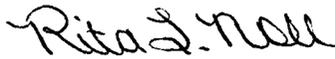
In summary, the Hutchinson city manager acted as an individual, and not as a committee subordinate to the city commission, in recommending an applicant for the job as engineering consultant. While three city employees chosen by the city manager to assist in the selection process were designated as the "Consultant Selection Committee," it is the nature of a group, and not its designation, which determines whether it is subject to the KOMA. Smoot and Clothier, supra, at 251. In our opinion, this "committee" is not a

body required to have open meetings. The individuals assisted the city manager by lending their expertise and providing information, but they did not, as a group, make any collective decisions. Since the "committee" did not have any decision-making authority, the Hutchinson city manager acted alone and thus is not a public "body" for purposes of the open meetings laws.

Very truly yours,



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