



STATE OF KANSAS

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January 16, 1987

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ATTORNEY GENERAL OPINION NO. 87- 10

Dale W. Bell  
City Attorney  
522 Mechanic  
P.O. Box 928  
Emporia, Kansas 66801

Re: State Departments; Public Officers and Employees --  
Public Officers and Employees; Open Public Meetings  
-- Authorized Subjects for Discussion in Executive  
Session; Personnel Matters

Synopsis: The "personnel matters" exception to the open  
meetings law, K.S.A. 75-4319(b)(1), pertains to  
employees of public agencies. Persons appointed to  
public boards and committees are not employees,  
they are public officers. Therefore, discussions  
concerning the qualifications of candidates for  
such appointed positions cannot take place in an  
executive session but must be held in an open  
meeting. Cited herein: K.S.A. 75-4317; K.S.A.  
1986 Supp. 75-4318; K.S.A. 75-4319.

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Dear Mr. Bell:

As city attorney for the City of Emporia, you request our  
opinion regarding the Kansas Open Meetings Act (KOMA), K.S.A.  
75-4317 et seq. Specifically, you ask whether the city  
commission may recess into executive session to discuss the

qualifications of candidates for appointed positions on boards or committees of the city.

The KOMA requires meetings of public bodies, such as city commissions, to be open to the public. K.S.A. 1986 Supp. 75-4318(a). A public body may, however, recess into a closed meeting to discuss the six subjects listed in the act. K.S.A. 75-4319(b)(1) provides that an executive session may be called to discuss "[p]ersonnel matters of non-elected personnel . . . ."

Exceptions to the open meetings law are narrowly construed. Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.J. 241, 275 (1981). The KOMA permits certain subjects to be discussed behind closed doors because "the interests served by maintaining secrecy are more important than those promoted by informing the public." Id. at 274 quoting Note, Open Meetings Statutes: The Press Fights for the "Right to Know", 75 Harv. L. Rev. 1199, 1206 (1962). The purpose of the "personnel matters of non-elected personnel" exception is to "protect the privacy of employees; saving personal reputations and encouraging qualified people to select and remain in the employ of government." Id. at 275. (Emphasis added.) See Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State?, 25 U. Kan. L. Rev. 169, 195 (1977). In Attorney General Opinion No. 81-39 we opined that a public body may recess into executive session to discuss individual employees, but that "[d]iscussions concerning groups of employees which do not infringe upon the individual are beyond the purposes for which the exception for personnel matters was created."

It is maintained that, since the exception contains the words "non-elected," the city council may go into executive session to discuss the qualification of persons appointed to boards or committees. However, in order to utilize this exception, the individual to be discussed must also be "personnel." The question arises whether appointed members of boards and committees are "personnel" for purposes of the KOMA.

It is a fundamental rule of statutory construction that "ordinary words are to be given their ordinary meaning . . . ." State v. Haug, 237 Kan. 390, 391 (1985); State v. Gibson, 8 Kan.App.2d 135, 137 (1982). "Personnel" is defined in Webster's Third New International Dictionary 1687 (1964) as "a body of employees employed in some service . . . ." See Hernandez v. Frohmiller, 204 P.2d 854, 860 (Ariz. 1949). In State v. Hernandez, 556 P.2d 1174,

1175 (N. Mex. 1976), the court stated: "'Personnel' refers to a body of persons, such as a body of employees . . . ." As stated earlier, the purpose of K.S.A. 75-4319(b)(1) is to protect an employee's privacy and reputation and to encourage persons to select and maintain government employment. Therefore, we must conclude that the personnel exception to the open meetings law pertains to matters concerning employees of public agencies.

Appointed members of boards and commissions are not employees, but are public officers. "[A] public officer is one whose functions and duties concern the public, and who exercises some portion of the sovereign power of the state." 63A Am.Jur.2d Public Officers and Employees §9. See Sowers v. Wells, 150 Kan. 630, 634 (1939). A person who "receives his authority from the law, and discharges some of the functions of government" is generally considered a public officer. 63A Am.Jur.2d at §5. See The State v. Rose, 74 Kan. 262, 269-70 (1906). One distinction made between officers and employees is that an officer has responsibilities for results while the duties of an employee are in obedience to the legal authority of another. Miller v. Ottawa County Comm'rs, 146 Kan. 481, 484 (1937). Another distinction is that a public office does not establish a contractual relationship whereas employment does. Id. at 485. The boards and committees of the city of Emporia are created by the city commission, by ordinance, resolution, or by binding action. In performing their duties members of these bodies carry out governmental functions by exercising the authority delegated to them. It is important to note that the KOMA requires boards, committees, councils, commissions and other such bodies subordinate to public bodies to hold open meetings. K.S.A. 1986 Supp. 75-4318(a).

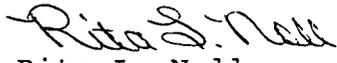
In addition, public policy considerations lead us to conclude that persons appointed to public boards and committees are not "personnel" under the KOMA. The qualifications of persons running for elective public office are subject to public scrutiny. The public should also have the opportunity to learn the qualifications of candidates for appointed public positions. In this situation, the public's right to know outweighs personal privacy interests.

In summary, the "personnel matters" exception to the open meetings law, K.S.A. 75-4319(b)(1), pertains to matters concerning employees of public agencies. Persons appointed to public boards and committees are not employees, they are public officers. Therefore, it is our opinion that

discussions concerning the qualifications of candidates for such appointed positions cannot take place in an executive session but must be held in an open meeting.

Very truly yours,

  
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RTS:JLM:RLN:crw