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ATTORNEY GENERAL OPINION NO. 87- 45

Charles F. Bennett
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P.O. Box 196
Erie, Kansas 66733

Re: Cities of the Third Class; Government by Mayor
and Council and General Laws Applicable to Cities
of the Third Class -- Election, Appointment and
Removal of Officers -- Husband and Wife Serving as
Council Members

State Departments; Public Officers and Employees
-- Public Officers and Employees; Open Public
Meetings -- Husband and Wife Serving on
Five-Member Board; Definition of "Meeting"

Synopsis: The mere fact that two members of a five-member
city council in a city of the third class are
married to each other does not violate the open
meetings law or any other Kansas statute. Cited
herein: K.S.A. 12-3002; 13-2903; 15-101; 15-106;
15-201; 15-209; 75-4317; 75-4317a; K.S.A. 1986
Supp. 75-4318.

* * *

Dear Mr. Bennett:

As attorney for the City of Erie, Kansas, a city of the
third class, you ask our opinion whether the open meetings
law, or any other Kansas statute, precludes a husband and wife
from both occupying positions on a five-member city council.

The statutes governing cities of the third class with a mayor-council form of government are found at K.S.A. 15-101 et seq. K.S.A. 15-201 provides that "[e]very two years an election shall be held for a mayor, and five councilmembers." The only qualification for office is that the councilmember must be an elector of the city. K.S.A. 15-209. These statutes do not prohibit a husband and wife from both serving as councilmembers. But cf. K.S.A. 13-2903 (Applicable to cities of the first class having the commission form a government, this statute provides that relatives of the mayor or any commissioner may not hold any city office.)

The Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., requires meetings of public bodies, such as city councils, to be open to the public. K.S.A. 1986 Supp. 75-4318(a). To constitute a "meeting" under the act, three elements must be present: (1) there must be a prearranged gathering (2) of a majority of a quorum of the membership of the body (3) for purposes of discussing the business of the body. K.S.A. 75-4317a.

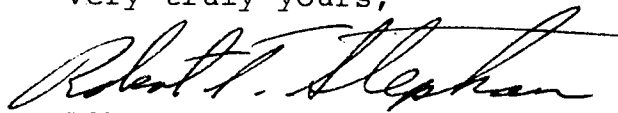
K.S.A. 15-106 states that a majority of councilmen must be present to constitute a quorum to do business. In Attorney General Opinion No. 83-6, we stated that a "'[m]ajority' . . . means the number one greater than half the number of members of the governing body" See also Attorney General Opinion No. 83-174. It was also noted in the opinion that since particular quorum requirements are not uniformly applicable to all cities, a city may through its home rule powers change the quorum requirements of its governing body by charter ordinance. We are informed that the city of Erie has not changed the number required to constitute a quorum specified in K.S.A. 15-106. (It should be noted, however, that an ordinance cannot be enacted unless a majority of the entire membership of the city council votes for it. K.S.A. 12-3002.) In Attorney General Opinion No. 86-110 we opined that the "membership of the body" in a mayor-council form of municipal government does not include the mayor for purposes of determining the minimum number of persons that can constitute a meeting.

A quorum of Erie's city council exists if three councilmembers are present. A majority of the quorum is two. Therefore, under the KOMA, the second requirement of a meeting is met if two councilmembers are together. The question arises whether the law is violated if two councilmembers are married to each other.

Before there can be a violation of the KOMA, all three elements of a "meeting" must be satisfied. Granted, two persons living in the same house can be said to be a "prearranged gathering." However, to meet the final requirement, the gathering must be prearranged for the purpose of discussing business. The fact that two councilmembers are married to each other and live together does not meet the third element, unless there is evidence that their living arrangement was planned in order that they might discuss city business in private.

We realize that persons who are around each other naturally tend to discuss items of mutual interest. We must conclude, however, that the mere fact that two councilmembers of a five-member city council are married to each other does not violate the open meetings law. Family members are not prohibited by the KOMA nor any other statute from serving as councilmembers of a city of the third class. In this instance we can only caution the husband and wife councilmembers not to discuss city business between themselves.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
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