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ATTORNEY GENERAL OPINION NO. 87- 91

Harold T. Walker
City Attorney
Ninth Floor, Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Executive Sessions; Acquisition of Property

Synopsis: Under the Kansas Open Meetings Act (KOMA), public bodies may recess into an executive session to discuss only those six subjects listed in the act. K.S.A. 75-4319(b)(6) provides that discussions concerning the acquisition of real property by a public body may take place in a closed meeting. Therefore, discussions relating to the sale of real property owned by a public body must be held in an open meeting. The procedures to be followed in conducting an executive session and in returning to an open meeting are left to the discretion of the members of the body as the KOMA does not regulate the operation of executive sessions. 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. Walker:

As the attorney for the City of Kansas City, Kansas, you request our opinion on two questions concerning the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq.

Your first question is whether a public body, such as the City Council of Kansas City, may discuss in an executive session the sale of real property owned by the city. The KOMA provides that meetings of public bodies must be open to the public. K.S.A. 1986 Supp. 75-4318(a). A public body may, however, recess into a closed meeting for the purpose of discussing one of the six subjects listed in the act. K.S.A. 75-4319(b)(6) states that an executive session may be called for "preliminary discussions relating to the acquisition of real property." (Emphasis added). It is your belief that the city council may discuss the sale of city property behind closed doors because K.S.A. 75-4319(b)(6) does not specifically state that the "acquisition" of real property must be by the city as opposed to being from the city.

The sixth exception to the open meetings law was discussed in Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.J. 241, 278 (1981):

"Finally, the 1977 Kansas Legislature included an exception to the open meetings mandate for 'preliminary discussions relating to the acquisition of real property.' Many states have adopted similar provisions to protect against adverse effects of publicity when public knowledge of a governmental land purchase would increase prices to the taxpayer's detriment. This reduces the scope of the exceptions to those situations in which the government is the purchaser. This interpretation also is consistent with the legislature's choice of the word 'acquisition' rather than 'sale' or other terms suggesting the applicability of the exception when the governmental body is the seller."

To give effect to the policy of openness in government, the KOMA is interpreted liberally and its exceptions narrowly. See K.S.A. 75-4317. It is a fundamental rule of statutory construction that "ordinary words are to be given their ordinary meaning." State v. Kitzman, 240 Kan. 191, 193 (1986), quoting State v. Cole, 238 Kan. 370, 372 (1985). Words used in a statute "are to be understood in their plain and ordinary sense." Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211, Syl. ¶ 1 (1976).

It is our opinion that a public body may not go into an executive session to discuss the sale of publicly owned property. The exceptions to the KOMA are to be strictly construed. Had the legislature intended to allow public bodies to discuss the sale of realty in private, it would have so provided. The language used in K.S.A. 75-4319(b) listing the subjects which may be discussed in a closed meeting must be interpreted as applying to that public body. Otherwise, the intent and purpose of the open meetings law would be thwarted. For example, K.S.A. 75-4319(b)(1) provides that an executive session may be had to discuss personnel matters. It would be against the rules of statutory construction and contrary to the open meetings law to interpret this provision as meaning that a city council could discuss matters concerning employees of an entity other than the city. In like manner, the language of K.S.A. 75-4319(b)(6) must be interpreted as applying to the public body seeking to recess into executive session. Therefore, the acquisition of realty must be by the city, not from the city, before exception six is applicable.

You also inquire as to the proper method "to remove a [public] body from Executive Session." The KOMA provides that to recess into an executive session a formal motion must be made, seconded, and carried containing a statement of the justification for the closed meeting, the subjects to be discussed, and the time and place the open meeting is to resume. K.S.A. 15-4319(a). The Act contains no provisions regulating the conduct of members of a public body while in an executive session. Thus, the procedure to be followed in an executive session is left to the members' discretion. The decision to return to open meeting is generally made by consensus of the members that discussion of the matter has come to an end. As you suggest, members of a public body may follow the rules of parliamentary procedure while in an executive session to insure orderly conduct of the meeting. In such a case a motion would be made, seconded, and carried to return to open meeting. It is important to remember that the public body must return to open meeting at the time stated in the motion. If more time is needed behind closed doors, an additional motion must be made.

In summary, discussions concerning the sale of real property owned by a public body must be held in open meeting as K.S.A. 75-4319(b)(6) provides only that the discussions concerning the acquisition of real property by a public body may take place in an executive session. The procedures to be followed in conducting an executive session and to return to open

meeting are left to the discretion of the members of the body as the KOMA does not regulate the operation of executive sessions.

Very truly yours,



ROBERT T. STEPHAN
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