



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87-170

Mr. Gene Porter  
Barton County Attorney  
Barton County Courthouse  
P.O. Box 881  
Great Bend, Kansas 67530

Re: State Departments; Public Officers and Employees --  
Public Officers and Employees; Open Public Meetings  
-- Attendance at Executive Sessions

Synopsis: K.S.A. 19-304 does not require the county clerk to  
attend executive sessions of the board of county  
commissioners. Only the members of a public body  
have the right to attend executive sessions of that  
body. Cited herein: K.S.A. 19-304; 75-4317;  
K.S.A. 1986 Supp. 75-4318; K.S.A. 75-4319.

\* \* \*

Dear Mr. Porter:

As Barton County Attorney, you request our opinion  
concerning the Kansas Open Meetings Act (KOMA), K.S.A.  
75-4317 et seq. Specifically, you ask whether a board of  
county commissioners may exclude the county clerk from  
attending executive sessions of the board, or whether K.S.A.  
19-304 requires the county clerk to attend such sessions.

Under the KOMA, meetings of public bodies must be open to  
the public. K.S.A. 1986 Supp. 75-4318(b) lists six subjects  
which the public body may discuss in private. These  
exceptions to the open meetings principle were enacted on the  
basis that in certain instances the interests involved in

preserving confidentiality outweigh the public's right to know. See Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.J. 241, 274 (1981). K.S.A. 75-4319(a) provides:

"Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess. . . for closed or executive meetings."

In Attorney General Opinion No. 86-143 we stated that "[t]he only persons who have the right to attend executive sessions are the members of that particular public body." (p. 3). In Attorney General Opinion No. 82-176 we concluded as follows:

"Individuals may attend executive sessions of government bodies subject to the Act upon invitation where such persons are present to provide information to the body or participate in its deliberations but may not attend merely as observers." (Emphasis added).

See Attorney General Opinion No. 80-43. ("[T]he board may include in its discussions in executive session those persons selected by the board to be present.")

K.S.A. 19-304 lists the duties of county clerk:

"The county clerk shall keep his office at the county seat; shall attend the sessions of the board of county commissioners, either in person or by deputy; keep the seals, records and papers of the said board of commissioners; and shall sign the records of the proceedings of the board of commissioners, and attest the same with the seal of the county." (Emphasis added).

See Comm'rs of Stafford Co. v. The State, ex rel., 40 Kan. 21, 26 (1888); State v. Allen, 5 Kan. \*124, \*129 (1869). In our opinion, K.S.A. 19-304 does not require the county clerk to attend executive sessions of the board of county commissioners. This statute has not been amended since its enactment in 1868. Therefore, the word "sessions" does not encompass the distinction between meetings and executive sessions made by the KOMA which became law in the 1970's.

It is a well-recognized rule of statutory construction that older statutes must be read in light of later legislative enactments. Thomas v. Board of Trustees of Salem Township, 224 Kan. 539, 544 (1978). K.S.A. 19-304 requires the county clerk to attend commission meetings to record the business of the board. The purpose of this provision is not lost by excluding the clerk from executive sessions. Keeping minutes of executive sessions would undermine the purpose of confidential, closed discussions as such minutes would be public record. See K.S.A. 45-215 et seq. (Kansas Open Records Act). While attendance is not required, commissioners may invite the clerk to attend the closed meeting if the clerk is needed to provide information or participate in the discussions.

In summary, K.S.A. 19-304 does not require the county clerk to attend executive sessions of the board of county commissioners. Only the members of a public body have the right to attend executive sessions of that body.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Rita L. Noll  
Assistant Attorney General

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