

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92-51

Joe Zima
School District Attorney
Unified School District No. 501
624 W. 24th Street
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Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Closed and Executive Meetings; Conditions;
Authorized Subjects for Discussions; Personnel
Exception; Employer-Employee Negotiations; Students

Schools -- Teachers' Contracts; Professional
Negotiations -- Applicability of Open Meetings Law;
Executive Sessions

Synopsis: K.S.A. 1991 Supp. 72-5423 and K.S.A. 75-4317 et
seq. may be read in harmony. Thus, although
K.S.A. 1991 Supp. 72-5423 mandates applicability
of the Kansas open meetings act to certain meetings
between professional employee organizations or
their representatives and a board of education or
its representative, the provisions of K.S.A.
75-4319 nevertheless permit certain discussions to
be closed. If a specific employee or student may
be discussed pursuant to K.S.A. 75-4319, a closed
executive session may permissibly include
individuals who aid the public body. Mere
observers may not attend executive sessions. Cited
herein: K.S.A. 1991 Supp. 72-5423; K.S.A.
75-4317; 75-4317a; 75-4318; 75-4319.

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Dear Mr. Zima:

As legal counsel for U.S.D. No. 501, you request our opinion on whether the bargaining teams of a board of education and a professional employee's organization may recess from an open meeting for a joint closed executive session, and if so, under what circumstances. The Kansas national education association restates the issue as this:

"Does the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., or the Professional Negotiations Act, K.S.A. 72-5413 et seq., permit a board of education to meet in executive session with representatives of the collective bargaining unit during professional negotiations?"

K.S.A. 1991 Supp. 72-5423 provides in pertinent part:

"(b) Except as otherwise expressly provided in this subsection, every meeting, conference, consultation and discussion between a professional employees' organization or its representatives during the course of professional negotiation and every hearing conducted by the secretary under K.S.A. 72-5426, and amendments thereto, for determination of the question of the existence of impasse is subject to the provisions of the Kansas open meetings law, and any amendments or supplements thereto. Meetings, conferences, consultations and discussions held by the secretary under K.S.A. 72-5426, and amendments thereto, for investigation of the question of the existence of impasse, and meetings, conferences, consultations and discussions held during the course of and in connection with, and the meeting required at the conclusion of, impasse resolution proceedings, as provided for in K.S.A. 72-5427 and 72-5428, and amendments to such sections, are specifically made exempt from the provisions of the Kansas open meetings law, and any amendments or supplements thereto." (Emphasis added).

K.S.A. 75-4317 et seq., the Kansas open meetings act (KOMA), generally requires that meetings of a public agency, as defined by K.S.A. 75-4318, be conducted openly unless otherwise permissibly closed by law. Although we do not have specific facts concerning the entity in question, it appears and we will assume that, pursuant to K.S.A. 1991 Supp. 72-5423, the KOMA applies to the meetings of the entity. Thus, unless otherwise excepted, meetings [as defined by K.S.A. 75-4317a and K.S.A. 1991 Supp. 72-5423(b)] must be conducted openly.

Statutory construction rules require that, whenever possible, laws should be read in harmony. See Harris v. Shanahan, 192 Kan. 629 (1964); Hessell v. Lateral Sewer District, 202 Kan. 568 (1969); Scogin v. Nugen, 204 Kan. 568 (1970). K.S.A. 1991 Supp. 72-5423 states that, "except as otherwise expressly provided in this subsection, every meeting . . . is subject to the provisions of the Kansas open meetings law. . . ." The statute does not specify that only portions of the KOMA apply to such meetings. Thus, the KOMA applies in its entirety to the meetings described by K.S.A. 1991 Supp. 72-5423.

K.S.A. 1991 Supp. 72-5423 specifically makes the KOMA applicable to most meetings between a professional employees' organization or its representative and a board of education or its representative. However, in addition to the impasse exception set forth in K.S.A. 1991 Supp. 72-5423(b), K.S.A. 75-4319, which is part of the KOMA, permits certain topics to be discussed in executive session. Such topics include: (b)(1), personnel matters of non-elected personnel; (b)(3), matters relating to employer-employee negotiations whether or not in consultation with the representative of the body or agency; and (b)(5), matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person.

K.S.A. 75-4319(b)(1) has been addressed by this office in Attorney General Opinions No. 80-102, 81-39, 87-10, 87-169, 88-25 and 91-31. In addition, State v. U.S.D. No. 305, 13 Kan.App.2d 117 (1988) concerned use of this exception. Generally stated these authorities permit bodies subject to the KOMA to go into a closed or executive session in order to discuss an individual employee of the public agency. This type of closed discussion is intended to protect the personal privacy of the individual employee. See State v. U.S.D. 305. K.S.A. 75-4319(b)(1) cannot be used to discuss groups of employees, general employee policy, independent contractors or individuals elected or appointed to a public body.

However, when an individual employee of a public agency is the topic of discussion by that agency, such matters may be permissibly discussed in executive session pursuant to K.S.A. 75-4319(b)(1).

Permissibly closed executive sessions may include individuals who are not members of the public body but who aid the body in its discussions. See Attorney General Opinion No. 91-31. Thus, the school board's negotiating team may allow executive session access to persons that assist the board in discussion of an individual employee. However, if the non-board members act only as mere observers wishing to learn about permissibly closed discussion topics, such persons cannot be included in executive sessions. See Attorney General Opinions No. 86-143 and 82-176. Mere observers may not attend executive sessions called under the KOMA.

There may be some question as to whether the negotiating team of the school board employs the individual being discussed. However, as an entity created by the school board that does employ certain individuals, we believe the personnel exception set forth at K.S.A. 75-4319(b)(1) permits commissions or groups created by the school board to discuss school board employees pursuant to K.S.A. 75-4319(b)(1). Thus, it is our opinion that the school board or its official bargaining team may, pursuant to K.S.A. 1991 Supp. 72-5423(b) and K.S.A. 75-4319(b)(1), close an otherwise open meeting to discuss an individual employee of the school board and may include in such an executive session those individuals who aid the negotiating team in that discussion.

K.S.A. 75-4319(b)(3) permits public bodies to meet in executive session to discuss the conduct or status of employee-employer negotiations. Such closed meetings may include the authorized representative who is actually doing the bargaining for the public agency. However, as discussed in Attorney General Opinion No. 79-125, this exception to mandatory openness may not be used if an employee or the employee's representative is present. Thus, K.S.A. 75-4319(b)(3) does not permit closure of discussions between a school board or its bargaining team and a professional employee organization or its representative if the topic of discussion is the conduct or status of negotiations.

K.S.A. 75-4319(b)(5) permits closure of open meetings in order to discuss specific persons, including a student. This permissive closure authority does not permit closed discussions of students in general. However, if an individual student is the topic of discussion by a school board or a sub-entity of the school board delegated authority over such

matters, the public body may discretionarily choose to close such discussions unless the student in question requests an open meeting. In accordance with our discussion on K.S.A. 75-4319(b)(1), closed discussions occurring pursuant to K.S.A. 75-4319(b)(5) may include individuals who assist the body in that discussion. Again, mere observers may not attend.


We note that the purposes of both the KOMA and K.S.A. 1991 Supp. 72-5423 point to a very limited use of any authority available for closed discussions between employee organizations and school boards. However, K.S.A. 1991 Supp. 72-5423(b) adopts all the provisions of K.S.A. 75-4317 et seq., it does not merely state all meetings are open except to the extent the impasse exception applies. There may be a specific situation where K.S.A. 75-4319(b)(1) or (b)(5) permits certain closed discussions between the entities in question. Such closure should be limited to discussion involving a specific individual employee or student and should occur only in accordance with the dictates and limitations established by K.S.A. 75-4319.

In summary, it is our opinion that K.S.A. 1991 Supp. 72-5423 and K.S.A. 75-4317 et seq. may be read in harmony. Thus, although K.S.A. 1991 Supp. 72-5423 mandates applicability of the Kansas open meetings act to most meetings between professional employee organizations or their representatives and a board of education or its representative, the KOMA permits certain discussions to be closed if the terms of K.S.A. 75-4319 apply. If discussion of a specific employee or student may be closed pursuant to K.S.A. 75-4319(b)(1) or (5), the executive session may permissibly include individuals who aid the body discussing such a topic. Mere observers may not attend executive sessions.

Very truly yours,



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