STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 21, 1975

Opinion No. 75- 171

Mr. Gerald E. Williams
Breyfogle, Gardner, Martin,
David & Kreamer
Court Square Building
110 South Cherry
Olathe, Kansas 66061

Dear Mr. Williams:

As city attorney for the City of Lenexa, you inquire concerning the application of the Kansas open meetings law, K.S.A. 75-4317 et seq., to proposed closed study sessions held by members of the city council. You indicate that the council has historically had such study sessions from time to time to discuss future projects for the city. A written agenda is made available to members prior to the session. Howeyer, no vote is taken at these sessions, and no other official business is conducted by the members other than informal discussion of future plans for the city. Also, no quorum is required for such sessions. You inquire whether, so long as no official business is conducted and no vote taken at the study sessions, such meetings are required to be open to the public under the cited act.

The legislative policy is declared by K.S.A. 75-4317 thus:

> "In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public." [Emphasis supplied.]

The essential requirement of the act is found in K.S.A. 75-4318:

> "Except as otherwise provided by law, all meetings for the conduct of the affairs of, and

> the transaction of business by all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part shall be open to the public and no binding action by such bodies shall be by secret ballot." [Emphasis supplied.]

K.S.A. 75-4319 permits closed or executive sessions "provided no binding action shall be taken during such closed or executive recesses. . . ."

The question presented is whether such a planning or study session is a meeting "for the conduct of governmental affairs and the transaction of governmental business." The act does not contain a statutory definition of these terms. For want of such a definition, the direction of K.S.A. 75-4319 that "no binding action shall be taken during such closed or executive session" has been construed by some to support a conclusion that governmental affairs are not conducted, and that governmental business is not transacted, unless some binding official action is taken.

Violation of the act is punishable upon conviction as a class C misdemeanor. The presence of penal sanctions has been commonly thought to justify a strict construction of the act, and accordingly, a restrictive definition of the kinds of meetings to which the act applies, i.e., only those meetings at which some official action is taken.

In Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969), the court considered the Florida "Sunshine Law," and rejected an argument of strict construction based on the traditional principles of construction of penal statutes:

> "Statutes enacted for the public benefit should be interpreted most favorably to the public. The fact that the statute contains a penal provision does not make the entire

> statute penal so that it must be strictly construed. For instance, the Workmen's Compensation Act makes it a misdemeanor for an employer not to secure payment of compensation. . . . This Court has nevertheless held that the Compensation Act is to be liberally construed." 224 So.2d at 699.

The Flordia "Sunshine Law," then found at Fla.Stat., §286.011, provided, as cited in Doran, thus:

> "All meetings of any board of commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meetings."

The court held the "obvious intent" of the language was

> "to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." [Emphasis supplied.]

Because of its particular pertinence to the question you raised, and because this question has been posed to this office a number of times in the recent past, we quote at some length from the opinion of the court:

> "The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies

> toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with 'hanky panky' in the minds of public spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." 224 So.2d at 699.

The statutory prohibition in our own act against the taking of binding action in closed or executive session has suggested to some that a meeting "for the conduct of governmental affairs and the transaction of governmental business" is one at which formal and official decisions are taken, and thus, that purely deliberative meetings are excluded from coverage by the act.

In Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 69 Cal.Rptr. 480 (Ct.App., Third District 1968), the court considered the California open meetings act, known as the Brown Act, in a dispute arising after newspaper reporters were denied access to a luncheon gathering of county supervisors and other county officers with certain labor officials. It was urged that the gathering was not a "meeting" within the act, on the ground that it was applicable only to "formal meetings for the transaction of official business, [and] inapplicable to informal session." The court stated, with particular pertinence here, as follows:

> "In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting

> conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County board of supervisors, was such a meeting." 69 Cal.Rptr. at 487.

The same must be said of the Kansas act. All meetings for "the conduct of governmental affairs and the transaction of governmental business," regardless of formality or informality, are required to be open to the public. If a study or planning meeting of members of the governing body is held for the purpose of discussing, planing and studying present and future programs of the municipality, those deliberations just as surely involve the "conduct of governmental affairs" as an official and formal decision implementing those plans or reflecting the result of those discussions. Similarly, planning and discussion, i.e., deliberation, are just as vital to the "transaction of governmental business" as an official yea or nay vote.

Accordingly, we must conclude that such study sessions as you describe are "meetings for the conduct of governmental affairs and the transaction of governmental business" which are required to be open to the public under K.S.A. 75-4317 et seq. I enclose a copy of 1975 House Bill No. 2101, which amends K.S.A. 75-4317 and -4318. These supplementary and additional requirements do not narrow or restrict the class of meetings which the public is entitled to attend.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

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