



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 15, 1975

ATTORNEY GENERAL OPINION NO. 75- 293

The Honorable Jim Lawing
State Representative
211 South Chautauqua
Wichita, Kansas 67211

Re: Open Meetings--Boards of Education

Synopsis: The election of the president of a board of education pursuant to K.S.A. 1974 Supp. 72-8202 must be held at an open meeting and may not be conducted by secret ballot.

* * *

Dear Representative Lawing:

You advise that in Wichita, there has recently been an election for president of the board of education which has precipitated some local controversy. This office has been contacted informally concerning the matter. You now request a formal opinion concerning the application to the Kansas open meetings law, K.S.A. 1974 Supp. 75-4317 *et seq.* to this election.

The election was conducted, as we understand and are advised, by secret ballot. Members cast their votes for candidates for president by indicating their choice on slips of paper which were unsigned and did not indicate the member casting each vote. The slips were tallied by the clerk of the board, presumably, or by some other person.

K.S.A. 1974 Supp. 75-4317(a) states 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

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conduct of governmental affairs and the transaction of governmental business be open to the public."

K.S.A. 1974 Supp. 75-4318(a) states thus:

"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 by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot.*"
[Emphasis supplied.]

K.S.A. 1974 Supp. 72-8202a provides in pertinent part thus:

"(a) At the first meeting of the board of education in July of each year, the board shall elect a president and vice-president The president and vice-president shall each serve for a term of one (1) year and until his successor is elected and qualified.

"(b) The president shall preside at meetings of the board and perform such other duties as are provided by law."

The board of education is a board subject to K.S.A. 1974 Supp. 75-4318(a). Accordingly, all meetings "for the conduct of the affairs of, and the transaction of business by" the board "shall be open to the public and no binding action . . . shall be by secret ballot." The election of a board president is required by law, and that election is surely held in "the conduct of the affairs of" the board. That election is among the first items

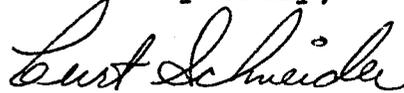
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of business to be conducted by the board at its organizational meeting, and it is certainly conducted in the course of the "transaction of business" of the board.

You do not indicate on what basis the election of a board president was thought to be exempt from the open-meeting law. It may have been argued that the election of a board president was merely an internal matter which did not affect in any binding fashion the rights of third parties. First, the open meeting law contains no exemption or exception for so-called "internal" matters. Moreover, the election of a board president is not merely an "internal" matter, but is required by state law, and must, accordingly, be held in the manner required by state law. That election is, of course, binding upon all members of the board, and is a binding designation of the presiding officer of the board, a matter in which the patrons of the district have an obvious interest.

We find no basis in the Kansas open-meeting law, either express or implied, for concluding that the elections of a board president pursuant to K.S.A. 1974 Supp. 72-8202a is exempt therefrom, and accordingly, we cannot but conclude that the election of the board president must be held in compliance with the open-meeting law, that is, the election must be held at a meeting which the public is entitled to attend and by other than secret ballot. Any form of balloting in which each vote cast by the respective members cannot be identified and attributed to the member casting such vote, constitutes a "secret ballot," in our judgment.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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