



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

August 15, 1975

ATTORNEY GENERAL OPINION NO. 75- 334

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

Re: Open Meetings--Legislature--Party Caucuses

Synopsis: The caucus conducted by members of each political party holding office in the Kansas Senate for the purpose of nominating persons for election as president of the Senate pursuant to K.S.A. 1974 Supp. 46-1601 is subject to the Kansas open meeting law, K.S.A. 1974 Supp. 75-4317 *et seq.*, as amended, and must be open to the public, with no binding action therein taken by secret ballot.

* * *

Dear Representative Lawing:

You inquire whether the Kansas open meetings law, K.S.A. 1974 Supp. 75-4317 *et seq.*, as amended by ch. 455, L. 1975, applies to a caucus of Republican members of the Kansas Senate which is presently scheduled to be held Thursday, August 21, 1975, pursuant to K.S.A. 1975 Supp. 46-1601 for the purpose of nominating candidates for election to the position of president of the Kansas Senate, recently vacated by the resignation of Senator Richard D. Rogers, now a judge of the United States District Court for the District of Kansas.

The caucus is held pursuant to K.S.A. 1974 Supp. 46-1901(a), which provides in pertinent part thus:

"When a vacancy occurs in the office
of president of the senate . . . and the

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legislature is adjourned to a date of more than thirty (30) days after the occurrence of the vacancy, the . . . senate . . . shall meet within thirty (30) days and elect a member thereof to fill a vacancy. The vice-president of the senate . . . shall within ten (10) days of such occurrence issue a call for such meeting *On the day preceding the date of the call the party caucuses of the appropriate house shall meet to choose their respective nominees.*" [Emphasis supplied.]

Members of the Senate attending the caucus receive compensation from public funds pursuant to subsection (d) of this section:

"Members of the legislature attending a meeting or caucus called pursuant to this section shall receive compensation, expense allowances and mileage as provided by K.S.A. 1973 Supp. 75-3212 and any amendments thereto."

Under the referenced statute, each member of the Legislature attending the caucus will receive at least \$35 compensation, \$44 subsistence allowance, and mileage for attendance at the caucus and the meeting of the full Senate the following day.

The 1972 Legislature declared the policy of this state in statutory language found at K.S.A. 1974 Supp. 75-4317 as amended by ch. 455, L. 1975:

"(a) 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.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a)."

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The law by its express terms extends to the Kansas Legislature. K.S.A. 1974 Supp. 75-4318(a), unchanged by the 1975 amendment, 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.]

The Kansas Senate is, of course, a legislative body. A meeting of the full Senate, or of any subordinate body thereof, for the conduct of legislative affairs and the transaction of legislative business, for attendance at which compensation is paid from public funds, is a meeting to which the open meetings law applies.

Certainly, the nomination and election of the president of the Senate, as the presiding officer of that house of the legislature, is an item of legislative business. It has apparently been argued that a caucus of party members alone is not subject to the statute, because the caucus transacts only business of the political party only. That argument may be applicable in other instances, but it is wholly groundless here. The caucus does not assemble merely to transact affairs of the party. The caucus is called to nominate a person for election to an office of the legislative body, and not to any party office. Indeed, so far as K.S.A. 1974 Supp. 46-1601 is concerned, the caucus is not called to transact any affairs of the political party whatever. The members of the Senate are summoned to their respective party caucuses for a single purpose, to nominate members for election to offices of the legislative body. The Kansas Senate is not the satrapy of the majority party, and its presiding officer does not preside merely as a political party representative.

In *Ammond v. McGahn*, decided March 5, 1975, by the United States District Court for the District of New Jersey, reported at 43 Law Week 2389, the court described the role of a party caucus in the legislature of that state thus:

"The issue presented here resolves itself into whether the caucus is, in fact, an integral part of the legislative process. The caucus is composed of all Democratic members of the state senate, all of whom receive compensation from the state. Its sessions are conducted in the statehouse on state property and are attended by elected and appointed state officials. It is serviced by paid state employees, and notice of its meetings, given by telegrams listing proposed legislative bills and other matter on the agenda, are paid by the state.

* * *

Often, 'straw' votes are taken to determine the likelihood of passage of a bill. Since the Democratic members of the senate are a large majority, the result of a 'straw' vote will often determine the outcome of a bill on the floor of the senate.

* * *

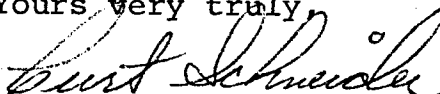
Additionally, a 'consent list' is prepared in the caucus, consisting of those bills that will pass on the floor without debate. The purpose of the list is to free legislative time by obviating the necessity for debate on routine matters. *In sum, the court determines that the caucus functions as an arm of the state legislature and is an essential part of the state legislative process.* The caucus exercises legislative power that is normally associated with sovereignty and, therefore, action by the caucus is state action within the meaning of 42 U.S.C. § 1983." [Emphasis supplied.]

We are not concerned here, unlike the cited case, with the role of the caucus in the dispatch of legislation. Here, the caucus is one which is required as an integral step specifically prescribed by law in the statutory process of nomination and election of the presiding officer of the legislative body. I

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cannot but conclude that the caucus held by the members of each political party pursuant to K.S.A. 1974 Supp. 46-1601(a) for the purposes of nominating persons for election as president of the Kansas Senate is a meeting which is required to be open to the public, pursuant to K.S.A. 1974 Supp. 75-4317 *et seq.* as amended, and that no binding action of either caucus may be taken by secret ballot.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj