



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 9, 1976

ATTORNEY GENERAL OPINION NO. 76-246

Mr. Ray A. Neale
City Attorney
City of Coffeyville
Coffeyville, Kansas 67337

RE: Cities - Open Meetings - Executive Sessions

SYNOPSIS: The Kansas open meeting law contains no statutory restriction regarding the subjects which may be discussed in executive or closed sessions of the governing body.

RE: Cities - Offices - Attorneys

SYNOPSIS: K.S.A. 12-1601 applies to any attorney who holds and occupies an office of the city, as distinguished from a position of employment.

* * *

Dear Mr. Neale:

I write pursuant to your recent conversation with a member of my staff concerning, first, the Kansas open meeting law. The question has been raised whether there is any statutory restriction on the subjects which may be discussed by the city governing body in closed or executive session. Concerning such sessions, K.S.A. 1975 Supp. 75-4319 provides merely thus:

"Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, to a specified time, but not adjourn, open meetings for closed or executive meetings provided no

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binding action shall be taken during such closed or executive recesses and that they shall not be used as a subterfuge to defeat the purposes of this act. . . ."

There is no statutory restriction whatever upon the matters which may be discussed during closed or executive meetings. Some Kansas cities have adopted ordinances, I understand, which prescribe that only certain enumerated subjects will be considered during executive sessions, as, e.g., personnel matters, land condemnations, pending litigation, and possibly others. Such restrictions are self-imposed by the city governing body, however, and are not mandated by the open meeting law itself. Such measures are to be commended, in my judgment, as a demonstration of commitment to the spirit of the open meeting law, and as a further safeguard against abuse of the law by executive sessions.

Secondly, you inquire concerning K.S.A. 12-1601, which states thus:

"It shall be unlawful for any elected or appointed public officer of any city to act as attorney, counselor or adviser adversely to such city in any litigation or controversy in which said city may be directly or indirectly interested."

The question is posed whether this provision applies to any attorney of the city who might be appointed to serve as a public officer of the city, such as a member of one of its boards or commissions, or as civil defense director. In my judgment, the restriction applies to any position of the city which constitutes an "office," as distinguished from a position of employment. See, e.g., *Jagger v. Green*, 90 Kan. 153, 133 Pac. 174 (1913) and *Bassler v. Gordon*, 119 Kan. 40, 237 Pac. 907 (1925). Whether the civil defense director is indeed an officer of the city or an employee thereof must be determined according to the powers and duties of the office, as to which we have no present information. Generally speaking, an officer is one who exercises some portion of the sovereign power of the city, as distinguished from an employee, who wields no portion of the corporate power of the city.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en

cc: Alvin F. Grauerholz