



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 12, 1976

ATTORNEY GENERAL OPINION NO. 76-343

Mr. Jerry Powell
Executive Director
Public Employee Relations Board
701 Jackson
Topeka, Kansas 66603

RE: Open Meeting Law--Public Employer Relations
Board--Fact-finding Hearing

SYNOPSIS: The hearing held by the fact-finding board
appointed by the Public Employee Relations
Board pursuant to K.S.A. 1975 Supp. 75-4332(c)
is required by the Kansas open meeting law,
K.S.A. 1975 Supp. 75-4317 et seq., to be
open to the public.

* * *

Dear Mr. Powell:

K.S.A. 1975 Supp. 75-4332 of the Kansas Public Employer-
Employee Relations Act, K.S.A. 1975 Supp. 75-4321 et seq.,
prescribes procedures whereby efforts may be made to resolve
disputes in the course of meet and confer proceedings under
the act. Subsection(b) states in pertinent part thus:

"[Upon occurrence of an impasse,] either
party may request the assistance of the public
employee relations board or the board may
render such assistance on its own motion.

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In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board."

If the impasse persists seven days after the mediators have been appointed, the board shall appoint a fact-finding board. Subsection(c) states in pertinent part thus:

"[T]he board shall appoint a fact-finding board of not more than three (3) members, each representative of the public, from a list of qualified persons maintained by the board. The fact-finding board shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. It shall make written findings of facts and recommendations for resolution of the dispute and, not later than twenty-one (21) days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public seven (7) days after it is submitted to the parties. If the dispute continues fourteen (14) days after the report is submitted to the parties, the report shall be made public."

K.S.A. 1975 Supp. 75-4322(p) defines "fact-finding" as:

"investigation of such a dispute by an individual, panel, or board with the fact-finder submitting a report to the parties describing the issues involved; the report shall contain recommendations for settlement and may be made public."

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You inquire whether the Kansas open meeting law, K.S.A. 1975 Supp. 75-4317 et seq., requires that any hearing conducted by the fact-finder in the course of the fact-finding process be open to the public. K.S.A. 1975 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 shall be by secret ballot."

The Public Employee Relations Board is clearly an administrative agency of the state which is subject to the open meeting law. The person or persons who are appointed by the Board as fact-finders under the cited statute constitute an administrative arm of the Board, specifically designated by statute to act for the Board. The Board is assigned an important role in the resolution of labor disputes under K.S.A. 1975 Supp. 75-4332. Upon the determination that an impasse exists in meet and confer proceedings, the board "shall aid the parties in effecting a voluntary resolution of the dispute." The fact-finding process is a principal step in the statutory procedure designed for the resolution of such disputes. The fact-finder appointed pursuant to K.S.A. 1975 Supp. 75-4332(c) is the administrative arm of the Board to implement its responsibility for the resolution of labor disputes which have reached impasse and which persist unresolved after the appointment of mediators. In conducting the hearing required by statute, the fact-finder certainly is engaged in the "conduct of the affairs of" the Board, and such hearings are required, in my judgment, to be open to the public by the open meeting law.

It may be argued that such hearings are impliedly excepted from the open meeting law by provisions for delayed disclosure of the findings and recommendations of the fact-finding board. K.S.A. 1975 Supp. 75-4332(c) states in pertinent part thus:

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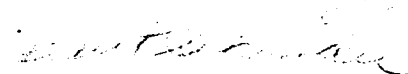
"It [the fact-finding board] shall make written findings of facts and recommendations for resolution of the dispute and, not later than twenty-one (21) days from the day of appointment, shall serve such findings on the public employer and the recognized employer organization. The board may make this report public seven (7) days after it is submitted to the parties. If the dispute continues fourteen days (14) after the report is submitted to the parties, the report shall be made public."

Thus, the written findings of fact and recommendations of the fact-finding board are not required to be made public until twenty-one days after they are served on the employer and employee organization, although they may be made public 7 days after such service.

Public attendance at the hearing held by the fact-finding board does not compromise the seven-day confidentiality of the findings and recommendations of the board. The hearing is required, of course, to permit the employer and the employee organization to furnish the fact-finding board all the information, supported by their respective arguments, which they believe will best assist the board. The facts and arguments urged by the parties will, necessarily, often be conflicting, and public exposure to the raw material, as it were, from which the board renders its findings and recommendations, in no way affords the public access to the findings and recommendations themselves prior to their issuance and service upon the parties to the proceedings.

Accordingly, it is my opinion that the hearing held by a fact-finding board appointed by the Public Employee Relations Board pursuant to K.S.A. 1975 Supp. 75-4332(c) is required by the Kansas open meeting law, K.S.A. 1975 Supp. 75-4317 et seq., to be open to the public.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:bw
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