



STATE OF KANSAS

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January 11, 1978

ATTORNEY GENERAL OPINION NO. 78 - 13

Mr. Larry Winn III
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Prairie Village, Kansas 66208

Re: Open Meetings--Cities--Boards of Zoning Appeals

Synopsis: In reviewing appeals from decisions of city officials administering a municipal zoning ordinance, the board of zoning appeals acts in a quasi-judicial capacity, and its deliberations respecting such decisions are exempt from the Kansas open meetings law, K.S.A. 1977 Supp. 75-4317 et seq., under an amendment approved by the 1977 legislature.

* * *

Dear Mr. Winn:

On behalf of the board of zoning appeals of the City of Leawood, Kansas, you request my opinion whether deliberations of that body are required by the Kansas open meeting law, K.S.A. 1977 Supp. 75-4317 et seq., to be held in open session.

The 1977 legislature amended K.S.A. 1976 Supp. 75-4318 of that law to add the following language:

"[A]ny administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving quasi-judicial functions."

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The board of zoning appeals exercises important powers in the administration of municipal zoning ordinances. Without belaboring the nature of the board itself, for the purpose of this opinion it is sufficient to assume that it is an administrative body. The more important question, however, is the nature of the powers which it wields, whether those powers are indeed quasi-judicial in any respect so as to entitle the board to conduct certain of its deliberations in closed session.

In Gawith v. Gage's Plumbing and Heating Co., Inc., 206 Kan. 169, 476 P.2d 966 (1970), the court stated thus:

"When courts are confronted with the problem of determining whether an administrative agency performs legislative or judicial functions, they rely on certain tests to aid in classifying the agency's functions. One such test is whether the court could have been charged in the first instance with the responsibility of making the decisions the administrative agency must make. Another is whether the function the administrative agency performs is one that courts historically have been accustomed to perform and had performed prior to the creation of the administrative body." 206 Kan. at 178.

See also, Gonser v. Board of County Commissioners, 1 Kan.App.2d 57, ___ P.2d ___ (1977). K.S.A. 12-715 prescribes the powers and duties of the board of zoning appeals, stating in pertinent part thus:

"The board of zoning appeals shall administer the details of appeals from . . . the application of the zoning ordinance as hereinafter provided

Appeals to the board may be taken by any person aggrieved, or by any officer of the city or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance. . . . The board shall have power to hear and decide appeals where it is alleged

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there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. The board may also, when it shall deem the same necessary, grant variances and exceptions to the zoning ordinance on the basis and in the manner hereinafter provided In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of said board may bring an action in the district court of the county in which such city is located to determine the reasonableness of any such order or determination."

The board thus acts in important part as an appellate body, to review and determine whether there is "error in any order, requirement, decision or determination made by an administrative official." This task, of course, is distinctly akin to the very traditional and familiar judicial task of judicial review, determining, within the appropriate scope of review, whether there is error in a decision appealed to the court for judicial relief. Thus, the task of review of zoning decisions is directly analogous to the task which courts historically have been accustomed to perform. In addition, it is clear that had the legislature so wished, it could have dispensed with the intermediate review afforded by the board of appeals, and permitted appeal from zoning administrator's decisions directly to the district court. Instead, appeals are taken to the district court from the board of zoning appeals, rather than directly from the initial administrative decision. Thus, in my judgment, as an appeals board, the board of zoning appeals clearly acts in a quasi-judicial capacity.

In addition, the board is authorized to grant variances and exceptions. It is not entirely clear from the language of K.S.A. 12-715, supra, whether applications for variances and exceptions

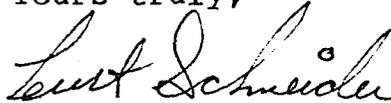
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are made in the first instance to the board, or whether it acts in this regard also in an appeals capacity, reviewing decisions granting or denying variances which are made first by officers administering the zoning ordinance. If the board acts in an appellate capacity, its deliberations on these matters would likewise be incident to the exercise of quasi-judicial powers. Board deliberation respecting any matter upon which it acts in an administrative capacity, i.e., regarding which it is empowered either by statute or the local zoning ordinance to decide in the first instance rather than in a reviewing capacity, does not fall within the exception to K.S.A. 1977 Supp. 75-4318, supra, and must be conducted in open session. However, board deliberations respecting matters entrusted to it by way of review of decisions made by other officers of the municipality in the administration of the zoning ordinance fall within the exception, and may be conducted in closed session.

During the 1977 legislative session, K.S.A. 1976 Supp. 75-4319 was amended to enumerate specifically the subjects which may be discussed during executive sessions. Although deliberations concerning "matters relating to a decision involving such quasi-judicial functions" were expressly excepted from the open meeting requirement, they were also not included among the subjects which the body may discuss in executive session. Thus, deliberations respecting quasi-judicial decisions are effectively excepted from the act entirely, and if a meeting or portion thereof is held for the purpose of such deliberations, the entire open meeting act, including the executive session provisions of the law, are inapplicable to such meetings.

It should be emphasized that merely because deliberations respecting quasi-judicial matters are excepted from the mandatory open meeting requirements of the act, such deliberations may still be held in open session if the board or other body wishes to do so.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj