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September 7, 1979

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ATTORNEY GENERAL OPINION NO. 79-200

Vern Miller
Sedgwick County District Attorney
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: State Departments; Public Officers, Employees--
Kansas Open Meetings Act--Definition of Meeting

Synopsis: A chance meeting at which public business or affairs are discussed by a majority of a quorum of the county commission is not required to be open to the public. And, in addition, in order for a meeting of a public body to be subject to the requirements of the Open Meetings Act, it is not necessary that business be formally transacted.

* * *

Dear Mr. Miller:

You request our opinion regarding the meaning and application of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., as amended. You express concern that chance meetings by members of various agencies, including the Sedgwick County Commission, may be violative of these statutory provisions. Further, you inquire whether the meeting must be held for the purpose of transacting business to fall within the scope of the Act.

Pursuant to your request and because no specific meeting or factual situation is presented, we will attempt to provide some guidelines for achieving compliance with the Open Meetings Act.

Vern Miller
Page Two
September 7, 1979

To determine whether a particular meeting is subject to open meeting requirements, three issues must be examined:

"a) Is the meeting a meeting covered by the law because it is for the conduct of the affairs of and the transaction of business of government?

"b) Is the body holding the meeting a legislative or administrative body or agency of the state or political and taxing subdivision 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?

"c) If the meeting is covered by the law, does it fall within any specific exemption?"
Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State? 25 K.L.R. 169, 177 (1977).

We will assume that the city and county government bodies and agencies with which you are concerned, indeed, are subject to the Act and are not statutorily exempt. Thus, we are asked to examine only the question of whether there is a "meeting" held and whether such meeting is for "the conduct of affairs of, and the transaction of business by" the bodies in question.

K.S.A. 75-4317a defines "meeting" as follows:

"As used in this act, 'meeting' means any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency."

Thus, for a gathering of the members of a given governmental body or agency to be subject to the Act, it must meet at least three prerequisites:

Vern Miller
Page Three
September 7, 1979

1) The meeting must be "prearranged." Chance encounters of members of any government board, commission, council or similar legislative or administrative entity will not constitute a "meeting" subject to the requirements of the open meetings act.

2) The number of members attending the gathering must be at least equal to a majority of a quorum. For example, two of the members of a five-member commission would be sufficient to satisfy this requirement.

3) The gathering must be for the purpose of "discussing the business or affairs of the body or agency." It should be noted that the language of K.S.A. 1978 Supp. 75-4318 suggests a slightly more restrictive requirement. That section provides in pertinent part:

"[A]ll meetings for the conduct of affairs of, and the transaction of business by, all legislative and administrative bodies . . . shall be open to the public . . ." (Emphasis added.)

The difference in the choice of terms between the broad definition of "meeting" in K.S.A. 75-4317a and the language of K.S.A. 1978 Supp. 75-4318, requiring such meetings to be open to the public, creates a good deal of confusion and mandates interpretation. Indeed, it has been suggested (prior to the adoption of K.S.A. 75-4317a) that a body must formally transact business to be subject to the Act. See letter from Vern Miller, Kansas Attorney General, to Bernard V. Borst, Sept. 13, 1974, at 2. Recently, however, this office has not followed that suggestion.

In Attorney General Opinion No. 75-171, Attorney General Schneider held that a study session of the Lenexa city council was required to be open to the public even though no quorum was required and no binding action taken. And although that opinion also predates the addition of K.S.A. 75-4317a (L. 1977, ch. 301, §1) to the Act, we concur in the sound reasoning of that opinion. The statutory definition of "meeting," contained in K.S.A. 75-4317a, was added to the Act in apparent response to the recommendations of Professor Deanell Tacha (see Tacha, supra at 179-182), and is arguably more expansive than the language of K.S.A. 1978 Supp. 75-4318. By its terms, the definition of "meeting" includes gatherings at which the transaction of business would not be possible. Thus, while a gathering of a majority of a quorum may not formally transact business, such a gathering may be subject to the mandates of the Open Meetings Act.

Vern Miller
Page Four
September 7, 1979

Notwithstanding this more inclusive interpretation, not all meetings of public officials are within the parameters of the Act. Naturally, each case turns on its facts, but we suggest that the following common sense guidelines may be of assistance:

1. Chance meetings of members of a legislative or administrative body subject to the Act do not have to be open to the public. In addition, we do not believe the legislature intended to preclude free association and free speech. Thus, prearranged social gatherings, coffee breaks, luncheon dates, etc., involving members of a board, committee, commission or agency, would not be violative of the Open Meetings Act, unless it was the purpose of the gathering to discuss public business and the gathering defeats the purpose of the Act. However, planning sessions, study sessions, customary gatherings before and after regularly scheduled meetings and other similar prearranged, though informal, gatherings are quite likely to be subject to the open meetings requirement. This is especially true where there is evidence that such gatherings are used to subvert the intent of the Act.

2. Members need not transact business by formal motion and vote to be subject to the Act. Discussion of the affairs and business of the body is all that is necessary to invoke the provisions of the Act. This would be true even though the purpose of the meeting is merely the receipt or distribution of information and discussion by members of the body is limited.

3. The Kansas courts will recognize substantial compliance with the terms of the Act. The courts will look to the spirit of the law and may be inclined to overlook technical violations, if a good faith effort of the public body has been made and the public's right to know has not been effectively denied. See Olathe Hospital Foundation, Inc. v. Extendicare, Inc., 217 Kan. 546, 562 (1975).

In summary, once it has been determined that an agency, board, council, commission or similar governmental body is subject to the Act, it must be determined if the gathering of members of the body constitutes a "meeting" as defined in K.S.A. 75-4317a.

Vern Miller
Page Five
September 7, 1979

Thus, to answer your specific questions, a chance meeting at which public business or affairs are discussed by a majority of a quorum of the county commission is not required to be open to the public. And, in addition, in order for a meeting of a public body to be subject to the requirements of the Kansas Open Meetings Act, it is not necessary that business be formally transacted.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk