



STATE OF KANSAS

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December 11, 1979

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ATTORNEY GENERAL OPINION NO. 79- 284

Tim R. Karstetter
McPherson County Attorney
Home State Bank & Trust Building
McPherson, Kansas 67460

Re: State Departments; Public Officers and Employees--
Open Public Meetings--Bodies Subject to Open
Meetings Act

Synopsis: A privately organized, non-profit corporation is
subject to the Kansas Open Meetings Act if it (1)
receives public funds in its operations and (2)
acts as a governmental agency in providing services
to the public.

* * *

Dear Mr. Karstetter:

You have requested the opinion of this office on the question of whether McPherson County Diversified Services, Inc. (MCDS), is subject to the Kansas Open Meetings law, K.S.A. 75-4317 et seq. You inform us that MCDS is a non-profit organization which operates almost totally on moneys derived from tax revenues, and which provides social services to the developmentally disabled citizens of McPherson County.

The Kansas Open Meetings Act was passed into law in 1972, with amendments to various sections thereof occurring in 1975, 1977 and 1978, and appears in the Kansas Statutes Annotated at 75-4317 et seq. The legislative declaration of policy underlying that law is set out in the first section thereof:

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"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."

Thus, the Act applies to governmental bodies, as contrasted with nongovernmental groups. The more precise reach of the Act is prescribed by K.S.A. 1978 Supp. 75-4318(a) thus:

"Except as otherwise provided by state or federal 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 added.)

It is clear from the above that in order to be subject to the Act, MCDS must be found to be a legislative or administrative body or agency, and it must receive or expend and be supported in whole or in part by public funds. There can be no doubt that the second prong of this test is met, for MCDS does expend public funds provided to it by the county.

From what we understand of the functions of MCDS, it cannot be said to be legislative in nature, leaving only the question remaining of whether it can be said to be an administrative agency of the state or of its political and taxing subdivisions. At this point it is necessary to note that Kansas case law is of little help in defining what is an "agency" under the Open Meetings Act. However, cases from other jurisdictions do provide some guidance. Some relevant factors which have been discussed include:

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1) If the agency has the authority to make governmental decisions and act for the state, it is covered by an open meetings law. If it only collects information, makes recommendations or renders advice, it is not. McLarty v. Bd. of Regents, 231 Ga. 22, 200 S.E.2d 117, 119 (1973).

2) What authority does the agency rely on in the exercise of its functions? Soucie v. David, 440 F.2d 1067 (D.C. Cir. 1971).

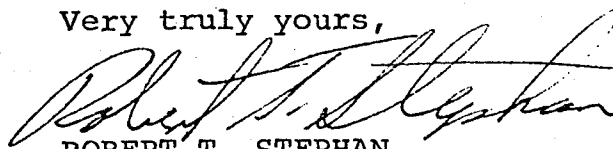
3) Is the agency subject to government audits or otherwise have its business procedures supervised? Rocap v. Indiek, 539 F.2d 174 (D.C. Cir. 1976).

4) Finally, one court has defined "governmental agency" to include corporate instrumentalities that accomplish public ends, both governmental and proprietary. Ratan Public Service Co. v. Hobbes, 76 N.M. 535, 417 P.2d 32 (1966).

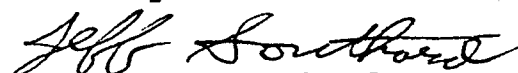
From the above, we would conclude that MCDS is covered by the terms of the Open Meetings Act. We note that the Board of County Commissioners of McPherson County confirms all appointments to the board of directors of MCDS. Additionally, MCDS is required to report back to the Commissioners concerning the handling of its funds and the types of services it provides. As noted above, these services are extended to retarded and handicapped persons. As such, MCDS provides programs which would otherwise have to be offered by the state or one of its political and taxing subdivisions, if they were to be offered at all. This would seem to constitute "governmental affairs" of the kind which the Act intended to be open to public scrutiny, since the way in which such tax-supported programs are run would be of keen interest to many citizens.

In conclusion, it is our opinion that a privately organized, non-profit corporation is subject to the Kansas Open Meetings Act if it receives public funds in its operations and acts as a governmental agency in providing services to the public. As MCDS would appear to be such an agency, it is covered by the terms of the Act.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk