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ATTORNEY GENERAL OPINION NO. 80-28

Merle R. Bolton
Commissioner of Education
Department of Education
120 E. 10th
Topeka, Kansas

Re: State Departments; Public Officers, Employees--
Public Officers and Employees--Open Meetings
Law

Synopsis: The Kansas open meetings law (K.S.A. 75-4317
et seq.) applies to meetings of a majority
of a quorum of a school board when meeting
to discuss local school issues with members
of local interest groups. Members of the
board may not participate in such meetings
held in contravention of state law.

* * *

Dear Commissioner Bolton:

You request the opinion of this office as to application of the Kansas open meetings law to the participation of school board members in activities, the purpose of which is the discussion of local educational concerns of certain special interest groups. You advise that the board members have been invited to attend a gathering sponsored and initiated by the local Mexican-American Committee on Education (MACE). You further state that the members were invited "as individuals" and that the invitation was not sent to the school district office. However, the purpose of the gathering is the "discussion [of] educational matters, including local educational concerns of this ethnic portion of the district population."

The Kansas open meetings law (K.S.A. 75-4317 et seq.) provides in pertinent part:

"[A]ll 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 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 shall be open to the public and no binding action by such bodies shall be by secret ballot" K.S.A. 1979 Supp. 75-4318.

The law now 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." K.S.A. 75-4317a.

You do not advise as to the number of persons serving on the school board in question or as to the number who would attend the gathering. We would note, however, that the provisions of the open meetings law are only invoked upon the assembly of "a majority of a quorum of the membership."

As we observed in Attorney General Opinion No. 79-200, the 1977 addition of the definition of "meeting" places broader language in the act. K.S.A. 75-4317a defines "meetings" to include gatherings "for the purpose of discussing the business or affairs of the body or agency" while K.S.A. 1979 Supp. 75-4318 refers to meetings "for the conduct of the affairs of, and the transaction of business by," bodies subject to act. (Emphasis added.) However, there can be little question that the law encompasses "all gatherings at all stages of the decision-making process." Coggins v. Public Employee Relations Board, 2 K.A.2d 416, 423 (1978), petition for review denied. Thus, gatherings attended by members of a public body may be subject to the act even though no "formal" meeting is held or binding action taken.

In Sacramento Newspaper Guild v. Sacramento Co. Bd. of Super., 69 Cal.Rptr. 480 (1968), the California Third District Court of Appeals decided a landmark case on similar facts. The Court held that the gathering of five members of the county supervisors, other county officials and members of the local AFL-CIO at a luncheon meeting at the Elks Club for the purpose of discussing a labor dispute with the county was a violation of the California open meetings law. Attorney General Schneider relied upon this case for the proposition that deliberations, even without official action by a public body, are subject to Kansas open meetings law. See Attorney General Opinion No. 75-171.

The school board is, without question, a public body subject to the act. And it is evident from the situation you pose, that the purpose of this prearranged gathering is the "discussion" of the issues and the "conduct of the affairs" of the local educational system. Such matters are the business of the board. Thus, the only remaining question is whether the fact that the gathering was initiated by persons other than members of the board and that board members were invited to attend "as individuals," somehow takes the gathering outside the scope of the act. We do not believe such facts alter the essential nature of the meeting and as such the meeting remains subject to the open meetings law.

Of course, strictly "social get-togethers" at which discussion of public business is not the purpose of the gathering are not subject to open meetings legislation. See, for example, Channel 10, Inc. v. Independent School District No. 709, 215 N.W.2d 814, 827 (Minn. 1974) and Orange County Publications v. Council of City of Newburgh, 401 N.Y.S.2d 84, 90 (1978). Yet, it is the fact that business of the public body is to be discussed which makes the gathering you describe suspect under Kansas law. Indeed, the closing of the doors to such a gathering creates an appearance of impropriety, something that is not preferred in policy or in law. Attorney General opinions of numerous other states are in agreement. See, for example, Cal. Att'y. Gen. Op. I.L. 75-235, November 13, 1975.

We cannot agree that the fact that the meeting is requested and organized by persons other than the members of the board, alters the essential public nature of the meeting. Kansas law implies that meetings of public bodies subject to the act may be called by "persons" other than the presiding officer. See K.S.A. 1979 Supp. 75-4318(c). Note, however, the law does not authorize suit for civil penalties against non-members of the body. K.S.A. 75-4320. Were the mere identity of the persons

arranging the gathering to be the determining factor, the Kansas open meetings law could be avoided at whim. Likewise, it is clear from your description of the situation, that the members are not being invited to attend the meeting strictly "as individuals." On the contrary, the school board members were invited to attend because they are school board members. Indeed, if school board members were attending simply as members of the "public," it would be difficult to understand how other members of the public and press would be excluded, hence there would be no question regarding a closed meeting. As the Kansas law so clearly states, it is the presence of the members of the public body and the discussion of public issues which are important in the application of the open meetings law. The existence of both these elements suggests the existence of a meeting subject to the act. Absence of either element forces the opposite conclusion.

Naturally, we cannot speculate for all future situations the propriety of a particular gathering of board members. Each must be analyzed on its facts to determine the nature of the meeting held. In a prosecution pursuant to the Open Meeting Law, a Kansas court would probably take into consideration whether the violation is so serious as "to subvert the policy of public meetings." See K.S.A. 75-4317. Likewise, the courts would look to the question of whether the violation was "knowingly" done and whether the meeting was "not in substantial compliance" with the act. See K.S.A. 75-4320. As the Kansas Supreme Court noted in Olathe Hospital Foundation, Inc. v. Extendicare, Inc., 217 Kan. 546, 562 (1975), "[n]either law nor good sense" requires the voiding of action taken at a meeting in substantial compliance with the act. Under the facts of Olathe Hospital the court said: "There may have been a technical violation of the act, but there was no violation of its spirit." Id. at 562. In short, a mere "technical" violation normally will not give rise to the penalties authorized by K.S.A. 75-4320. But based on the situation you describe, where the members knew other members would attend and school board business would be discussed, we would be inclined to find that the board members would be acting improperly by participating in such a meeting not open to the public.

You next inquire whether members of the board should excuse themselves from such gatherings if they believe the meeting is held in violation of the Kansas open meetings law. We can see the obvious utility of such informational meetings and would prefer to see all such meetings open to the public.

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School board members could initiate a number of measures to encourage substantial compliance with the law, including the providing of notice of the gathering to those who have requested notice and requesting that the gathering be open to the public. But, if that is not possible, then members of the board must take any steps necessary to avoid violating the law.

We feel inclined to stress our belief that the good faith efforts of board members to comply with the law will be weighed by Kansas courts but meetings of school board members with special interest groups to discuss the business of the school district infringes upon the rights of an informed electorate by allowing certain persons and groups to do in private that which must be done in public.

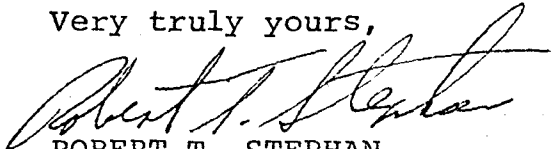
Your final inquiry relates to "information-gathering grass roots meetings" prearranged with local PTA organizations to "answer questions and receive information" presumably relating to the business of the school board. You ask if such gatherings are "meetings" subject to the open meetings law and if so, whether regular procedures of official meetings must be followed.

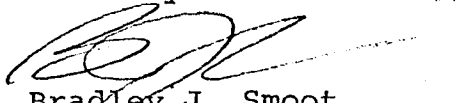
Assuming that such meetings are attended by a majority of a quorum of the school board for the purpose of discussing the affairs of the school district, we would conclude that such meetings are indeed subject to the Kansas open meetings law. Our conclusion in this regard is necessarily based on the same rationale as that described above. For your information, the Attorney General of California (Cal. Att'y. Gen. Op. 63-82, January 22, 1964), has held that similar meetings of a public body with the local chamber of commerce were subject to that state's open meetings laws.

Naturally, if the law applies, the statutory requirements regarding notice, agenda and executive session apply also. Other practices of the body, unrelated to open meetings law, made necessary at formal meetings by law or local rule, are not necessarily required at such PTA gatherings.

Therefore, we conclude that the Kansas open meetings law applies to meetings of a majority of a quorum of a school board when meeting to discuss local school issues with members of local interest groups. Members of the board may not participate in such meetings held in contravention of state law.

Very truly yours,


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