

STATE OF KANSAS

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February 13, 1980

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ATTORNEY GENERAL OPINION NO. 80-43

The Honorable Joseph C. Harder
State Senator, Twenty-Fifth District
143-N, State Capitol
Topeka, Kansas 66612

Re: State Departments; Public Officers,
Employees--Public Officers and
Employees--Meetings of School Board
Members and Teachers

Synopsis: Meetings of teachers with a majority
of a quorum of the membership of a
school board for the purpose of dis-
cussing school district business is
subject to the requirements of the
Kansas Open Meetings Act, K.S.A.
75-4317 et seq. Any person request-
ing notice of such public meeting
is entitled to notice and has a
right to attend.

* * *

Dear Senator Harder:

You request the opinion of this office regarding conversations
between teachers and the local school board. Specifically,
you ask:

"1. Can teachers meet with the local school
board members without the superintendent
being present?

"2. Can more than one teacher have a dis-
cussion with several board members at the
same time, or must it be on a one to one
basis?"

You further advise that school teachers of the district are distressed because the board refuses to talk with them "in both a formal and informal manner."

K.S.A. 1979 Supp. 75-4318 states 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 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. . . ."

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."

Unquestionably, a school board is a public body subject to the Kansas Open Meetings law. Thus, where a "majority of a quorum" of the school board membership gathers to discuss the business or affairs of the school district, all members of the public must have an opportunity to observe such gatherings. And this is the case even where the meeting is informal and merely for the discussion of issues without the taking of binding official action. In Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416, 423 (1978), the Kansas Court of Appeals said, "we conclude that the term [meeting] includes all gatherings at all stages of the decision-making process."

In response to your first query, the superintendent is a member of the public and, as such, is entitled to attend all meetings of the school board. Likewise, if he or she requests notice of regular and special meetings of the board, notice must be given. See K.S.A. 1979 Supp. 75-4318(b). However, we are aware of no law which requires the superintendent to be present

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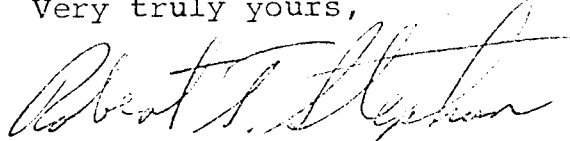
at any such gathering. It should be noted that the board members may vote to recess into executive session if the topic to be discussed is within those subjects permitted in executive sessions pursuant to K.S.A. 75-4319. So long as the procedural requirements of that section are followed, the board may include in its discussions in executive session those persons selected by the board to be present. See Blum v. Board of Zoning Appeals of North Hempstead, 149 N.Y.S. 2d 5, 8, 1 Misc. 2d 668 (1956), Thomas v. Board of Trustees, 215 N.E. 2d 434, 436, 5 Ohio App.2d 365 (1966).

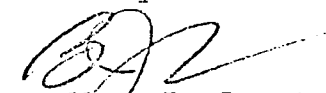
With regard to your second question, any number of teachers may meet with more than a majority of a quorum of the school board so long as K.S.A. 75-4318 et seq. is honored. (See previous discussion regarding executive sessions.) And any number of teachers may meet with any number of members less than a majority of a quorum without fulfilling the requirements of the Open Meetings Act. We would caution, however, that such gatherings may not be used to subvert the purposes of the open meetings laws without running the risk of judicial disfavor. We would observe one additional caveat; contracts with teachers and their unions may attempt to restrain this type of informal discussion and such contracts or agreements should be consulted in this regard.

Finally, we are enclosing Attorney General Opinion No. 79-200, which provides some guidelines regarding chance meetings and highlights the distinctions between purely social gatherings, where no public business of the governmental body is discussed, and meetings subject to the Act.

In summary, meetings of teachers with a majority of a quorum of the membership of a school board, for the purpose of discussing school district business, is subject to the requirements of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Any person requesting notice of such public meeting is entitled to notice and has a right to attend.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk

Enclosure: Attorney General Opinion No. 79-200