



STATE OF KANSAS

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May 14, 1980

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ATTORNEY GENERAL OPINION NO. 80-102

Preston N. Barton II
Executive Secretary of the
Corrections Ombudsman Board
503 Kansas Ave. Suite 539
Topeka, Kansas 66603

Re: State Departments; Public Officers, Employees--
Open Public Meetings--Corrections Ombudsman Board

Synopsis: Matters involving specific persons under K.S.A. 75-4319(b)(1) and (5) may be discussed in executive session so long as no binding action is taken. However, investigations and research projects affecting groups of persons generally but not specifically, are not the proper subjects of a closed meeting, unless discussion concerns a subject matter otherwise specifically permitted to be considered in closed or executive session by 75-4319(b). Cited herein: K.S.A. 1979 Supp. 74-7401, 74-7402, 74-7403, K.S.A. 75-4317, K.S.A. 1979 Supp. 75-4318, K.S.A. 75-4319.

* * *

Dear Mr. Barton:

You request our opinion regarding the application of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. (as amended), to communications between yourself, as Ombudsman, and the Corrections Ombudsman Board. You indicate that your efforts to comply with the act have "significantly limited" communications between you and the Board because of certain "ongoing investigations of particular complaints of specific

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individuals or other serious issues regarding policies and procedures which directly affect staff and inmates within the corrections system."

You specifically ask direction from this office regarding "the possibility of closing meetings for the explicit purpose of discussing complaints and studies conducted by the Ombudsman Office." You also ask if K.S.A. 75-4319(b)(5) is an adequate and appropriate exemption for your purpose.

The Kansas Open Meetings Act was passed into law in 1972, with amendments to various sections thereof occurring in 1975, 1977, 1978 and 1979, 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:

"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."
K.S.A. 75-4317.

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. 1979 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 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, the Corrections Ombudsman Board must be one of the above specified entities, and must receive or expend, and be supported in whole or in part by public funds.

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The Board, pursuant to K.S.A. 1979 Supp. 74-7401, was created as an independent agency within the executive branch of state government. Certain of its powers and duties are specified in subsection (d) and include the following:

"(1) Appoint and supervise the activities of the ombudsman of corrections and establish the amount of compensation to be paid to such ombudsman as provided by K.S.A. 1978 Supp. 74-7403 or any amendments thereto.

"(2) Adopt and file with the division of budget its budget estimates for the operation of the board and the office of ombudsman of corrections.

"(3) Make recommendations to the secretary of corrections concerning policies, procedures and administrative actions of the department of corrections, which recommendations shall not be binding upon the secretary."

In addition, that section also provides:

"(e) The secretary of corrections shall provide members of the board with access to records not otherwise privileged by law and with reasonable access to facilities and persons under the jurisdiction of the secretary subject to conditions and time limitations the secretary may establish in order to insure the orderly operation of the correctional institutions."

K.S.A. 1979 Supp. 74-7402 provides for approval of all expenditures from appropriations to the Board by the chairperson or the ombudsman when the latter is authorized by the board. The statute further specifies that the secretary of corrections shall provide the board and the office of ombudsman with necessary personnel and accounting services.

K.S.A. 1979 Supp. 74-7403 provides for appointment of an ombudsman of corrections by the board who will serve as secretary of such board and whose office space is to be provided by the secretary of administration. The ombudsman's main duties require reporting to both the secretary of corrections and the Corrections Ombudsman Board "[a]ny misfeasance or discrepancy in administration or any unreasonable

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treatment of inmates in custody of the secretary of corrections." The ombudsman must forward complaints and grievances directly to the secretary of corrections for the latter's consideration.

As the above statutes indicate, there is little question that the Corrections Ombudsman Board is, pursuant to K.S.A. 1979 Supp. 75-4318(a), the governing body of a state "agency . . . receiving or expending and supported in whole or in part by public funds" and is therefore subject to the Kansas Open Meetings Act.

As a result, all meetings conducted by the Board must be open unless, pursuant to K.S.A. 75-4319, the subject matter of any meeting is such that the meeting is allowed to be closed. That statute describes certain procedures which must be followed scrupulously before any meeting, required by the act to be open, is conducted in private. Subsection (b) of that statute specifies an exclusive list of subjects which may be discussed at closed meetings:

- "(1) Personnel matters of nonelected personnel;
- "(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- "(3) consultations with the representative of the body or agency in employer-employee negotiations;
- "(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- "(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if he or she so requests; and
- "(6) preliminary discussions relating to the acquisition of real property."

As noted above, you indicate that there is a problem discussing with the Board in an open meeting setting, ongoing investigations of complaints or other serious issues regarding policies and procedures which directly

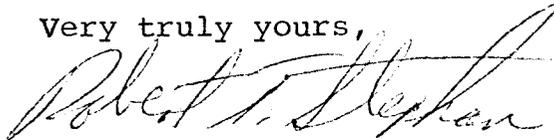
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affect staff and inmates of the state corrections system. K.S.A. 75-4319(b)(1) and (5) speak directly to this type of situation and in some situations would allow such problems to be discussed in a closed meeting. Clearly, an inmate of the state correctional system is a "resident of a public institution" for purposes of the Open Meetings Act. Similarly, individual members of the correctional staff would qualify as "nonelected personnel" within the meaning of the first exemption. However, this statute should not be read as allowing discussions about general topics or groups of staff members or inmates. Rather, a closed meeting should be called only when such discussions will concern specific staff members and/or inmates. And we would observe that in any event no binding action can be taken during such closed or executive sessions.

We recognize the difficulty that often accompanies compliance with the open meetings law. However, this statute proclaims a policy to which this state is committed and mere inconvenience does not excuse non-compliance.

Based on the above statutes it is therefore our opinion that matters involving specific persons under K.S.A. 75-4319(b)(1) and (5) may be discussed in executive session so long as no binding action is taken. However, investigations and research projects affecting groups of persons generally but not specifically, are not the proper subjects of a closed meeting unless discussion concerns a subject matter otherwise specifically permitted to be considered in closed or executive session.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:phf