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May 12, 1981

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ATTORNEY GENERAL OPINION NO. 81-106

Thomas W. Stockwell
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United Kansas Bank & Trust Building
Highway 50 at Antioch
Merriam, Kansas 66202

Re: Public Officers and Employees -- Open Public
Meetings -- Secret Balloting

Synopsis: The provisions of the Kansas Open Meetings Law
preclude the election of the acting president of
the City Council of Merriam by secret ballot.
Cited herein: K.S.A. 1980 Supp. 75-4318.

* * *

Dear Mr. Stockwell:

As city attorney for the City of Merriam, you advise that
the city has adopted an ordinance creating the office of
acting president of the city council, and you have inquired
whether K.S.A. 1980 Supp. 75-4318 precludes the election of
such officer by secret ballot. The pertinent provisions of
this statute are as follows:

"(a) Except as otherwise provided by state or
federal law or by rules of the house or senate,
and except with respect to any impeachment in-
quiry or other impeachment matter referred to
any committee of the house of representatives
prior to the report of such committee to the
full house of representatives, 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

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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, but any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions." (Emphasis added.)

We think it clear from the above-quoted provisions that the Kansas Open Meetings Law is applicable to the Merriam City Council. Such conclusion requires no discussion, other than to note that the City of Merriam is a political subdivision of the state and its city council is the body in which the city's legislative and administrative powers are vested.

Also, we note that the emphasized portion of the foregoing quoted provisions was construed in Attorney General Opinion No. 79-167 as precluding the casting of secret ballots by members of the Overland Park City Council for the election of the president of the council. A copy of that opinion is enclosed for your consideration. We believe the rationale supporting that opinion is applicable here, and in our judgment the election of the Merriam City Council's acting president constitutes binding action of the council.

Although the Kansas Open Meetings Law does not define "binding action," and we are unaware of any Kansas case law specifically construing such term, we have no hesitation in concluding that an election of an officer of a city's governing body constitutes "binding action" of that body. To conclude otherwise would ignore the purposes of these statutory provisions. "One apparent purpose is to make public every official's vote on the public's business." Olathe Hospital Foundation, Inc., v. Extendicare, 217 Kan. 546, 562 (1975). Within this context, it is apparent that the selection of the person who, in the absence of the mayor and council president, is to preside over the governing body and, as you stated in your letter, "to conduct the affairs of the City without undue delay," is certainly the public's business.

Finally, we note that one commentary on the Kansas Open Meetings Act has impliedly suggested that "binding action"

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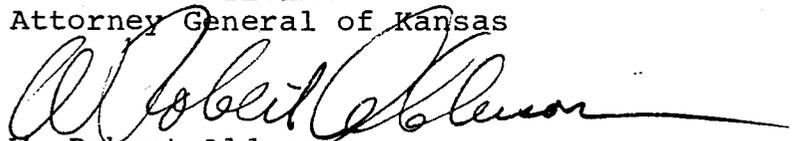
is the equivalent of "final action," and "[i]n other states the phrase 'final action' is often used and has been broadly construed 'to connote finality within the scope of the powers delegated' to the bodies subject to those statutes." Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241, 270 (1981). Applying this test to your inquiry leads to the same conclusion. Having the authority under city ordinance to elect a member of the city council as acting president thereof, we believe the council's selection of such officer constitutes final action within the scope of the powers delegated to the council in this regard.

Therefore, it is our opinion that the provisions of K.S.A. 1980 Supp. 75-4318 preclude the election of the acting president of the City Council of Merriam by secret ballot.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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