

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 26, 1982

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82-16

Marci Francisco  
Mayor  
City of Lawrence  
6 East 6th  
Lawrence, Kansas 66044

Re: State Departments; Public Officers, Employees --  
Public Officers and Employees -- Written Memoranda

Synopsis: The Kansas Open Meetings Act does not prohibit the use of written memoranda between members of a public body subject to the Act. However, use of written documents at an otherwise public meeting which effectively deny the public access to the decision-making process may constitute a violation of the Kansas Open Meetings Act. Cited herein: K.S.A. 1980 Supp. 45-201, K.S.A. 75-4317, 75-4317a, L. 1981, ch. 344.

\* \* \*

Dear Mayor Francisco:

You inquire of this office whether members of the Lawrence City Commission may communicate by memorandum without contravening the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., as amended by L. 1981, Ch. 344.

Written communications between members of a government body are not proscribed by the Act. Indeed, the Act, which clearly applies to the Lawrence City Commission, makes no mention of such memorandum. The Act is an "open meetings" law and not an open records law. [We note that the Kansas Public Records Act, K.S.A. 1980 Supp. 45-201 et seq., applies only to public records required by law to be "kept and maintained." Hence, in the absence of a statute or city ordinance requiring such memoranda to be retained, the state public records law is

inapplicable and such documents are not required by law to be public. See, generally, Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919, 920 (1974).]

We are not prepared to conclude that the legislature intended all written correspondence between members of a government body subject to the Act to constitute a "meeting" within the definition thereof in K.S.A. 75-4317a. That section provides as follows:

"As used in this act, 'meeting' means any pre-arranged gathering or assembly by a majority of a quorum of the membership of body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency."

The term "gathering" is commonly understood to mean "a coming together of people in a group." Webster's Third New International Dictionary, unabridged 940 (1968). Although open meetings laws are given a liberal construction, interpreting a written communique between two members of a public body to be a "coming together of people in a group" would be to expand the words chosen by the legislature beyond their clear meaning. Therefore, we cannot say as a matter of law that all written communications between city commissioners are subject to the Kansas Open Meetings Act.

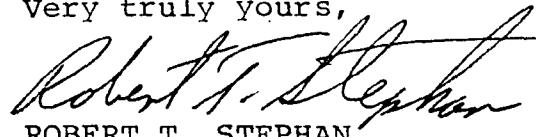
However, we hasten to add a caveat. The use of written documents at an otherwise public meeting as a means of denying public access to the decision-making process may constitute a violation of the Kansas Open Meetings Act. We call your attention to the case of Lee v. Superintendent of U.S.D. 489, No. 78 C 117 (Dist.Ct., Ellis County, Kan., April 24, 1979). There the court decided that materials prepared by the school district superintendent were available for public inspection under Kansas public records statutes and reserved the question of whether of Kansas Open Meetings Act would also require their disclosure. In addition, the Florida Attorney General has concluded that the use of coded symbols as a means of non-verbal communication between members of a public body at an otherwise public meeting would be a violation of that state's sunshine laws. Fla. Op. Att'y Gen., 076-240, Dec. 22, 1976; Fla. Op. Att'y Gen., 077-48, May 19, 1977. We approve such reasoning and think that when non-verbal communications are used as a subterfuge to defeat the purpose of our open meetings statutes, such action may give rise to a violation of the Act.

In summary, the Kansas Open Meetings Act does not prohibit the use of written memoranda between members of a public

Marci Francisco  
Page Three

body subject to the Act. However, use of written documents at an otherwise public meeting which effectively deny the public access to the decision-making process may constitute a violation of the Kansas Open Meetings Act.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle