



STATE OF KANSAS

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November 28, 1983

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ATTORNEY GENERAL OPINION NO. 83- 174

Frank M. Rice  
Jones, Schroer, Rice,  
Bryan & Lykins  
115 East Seventh Street  
Topeka, Kansas 66603

Re: Federal Jurisdiction -- Surplus Property of Federal  
Agencies -- Airport Authorities; Quorum

State Departments; Public Officers, Employees --  
Open Meetings Law -- Quorum Change of Metropolitan  
Topeka Airport Authority

Synopsis: The Metropolitan Topeka Airport Authority has no  
authority to change its quorum requirements from  
three to four members. Cited herein: K.S.A.  
17-6009, 27-327, 27-328, 27-330, 27-331, 27-336,  
75-4317, 75-4317a, K.S.A. 1982 Supp. 75-4318,  
K.S.A. 77-201, Fourth.

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Dear Mr. Rice:

You request our opinion concerning a by-law change of the  
Metropolitan Topeka Airport Authority. Specifically, you  
inquire whether the Metropolitan Topeka Airport Authority has  
the statutory authority to change its quorum requirements by  
amending its by-laws and whether such action would violate  
the Kansas Open Meetings Act, K.S.A. 75-4317 et seq.

In 1978 the legislature enacted K.S.A. 27-327 et seq. These  
statutes authorize the creation of joint airport authorities  
by certain counties and cities. In this case, the Metropolitan  
Topeka Airport Authority, hereinafter referred to as the MTAA,  
is composed of directors selected by the Shawnee County Com-  
mission and the Topeka City Commission. The MTAA operates  
Forbes Field, formerly a United States Air Force base, and  
Billard Airport.

Once the Authority is created pursuant to K.S.A. 27-328 it becomes an independent political subdivision of the state (K.S.A. 27-330), although the county and city commissions continue to appoint the members of the authority and hold the power of dissolution. K.S.A. 27-336. K.S.A. 27-330(b) states that "the authority shall be managed and controlled by a five member board of directors" and additionally sets out the qualifications and procedures for appointment to the board of directors. You note in your submitted memorandum that there is nothing in the enabling legislation to prevent the MTAA from changing its quorum requirements, in that such matters are usually left to the entity to determine in its by-laws. While such may be so, the enabling statutes cannot be examined in a void. Looking to K.S.A. 77-201, we find the following language:

"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

. . . .

"Fourth. Words giving a joint authority to three or more public officers or other persons shall be construed as given such authority to a majority of them, unless it be otherwise expressed in the act giving the authority."  
(Emphasis added.)

Said statute "provides in substance that if the legislature intends the full board to act, it must be expressed in the act giving the authority." In re Application of Murray, 193 Kan. 535, 540 (1964); see also, State, ex rel., v. Woodruff, 164 Kan. 339 (1948); Coggins v. Public Employee Relations Board, 2 Kan.App.2nd 416 (1978); Railway Co. v. Meyer, 58 Kan 305 (1897).

As the act establishes that the board shall be constituted of five members, with no specific authority stating the full board must control, it becomes necessary to determine the definition of majority within the meaning of K.S.A. 77-201, Fourth.

A "majority" is defined as "[t]he member greater than half of any total." Black's Law Dictionary, Revised Fourth Edition (1968), p. 1107. No Kansas courts have specifically defined "majority", but this office has determined that in a city subject to K.S.A. 13-1810, a majority "means the number one more than half." Kan. Att'y Gen. Op. No. 83-6,

p. 6. There, as here, we think it "axiomatic that a majority of a five member body is three members." Id. at p. 6.

A "quorum" on the other hand, is defined as "a majority of the entire body." Blacks, supra, p. 1421. And "unless a statute provides otherwise the generally accepted rule is that a majority of any body constitutes a quorum for the transaction of business, and a majority of the quorum is sufficient to take any particular action." 2 Am.Jur.2d Administrative Law, §196 p. 28-29. See e.g., Murray, supra; First Fed. S. & L. Ass'n v. State Board of Trust Co., Inc., 254 A.2d 835, 836 (N.H. 1969); Bray v. Barry, 160 A.2d 577, (R.I. 1960), Petition of Kinscherff, 556 P.2d 355, 357, 89 N.M. 669 (1976); Davidson v. State, 221 N.E.2d 814 (Ind. 1966), Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 W.L.J. 241, 260 (1981). Based upon the above rationale, we must conclude that in the absence of statutory authority to the contrary, generally both a majority and a quorum of a five member board is three members.

We note next that the MTAA is legally distinguishable from Kansas cities which exercise constitutional home rule powers. Kan. Const. Art. 12 §5. Cities, which have specified quorum requirements, may exempt themselves from statutory quorum requirements if the statutes are not uniformly applicable to all cities. Municipal authority for such change arises from the constitution and is not expressed or implied in statute. Moreover, the quorum change may be accomplished by charter ordinance only. See Kan. Att'y Gen. Op. No. 83-6. Thus, unlike cities, the MTAA, which has no constitutional powers, must find expressed or implied statutory authority to change the commonly accepted definition of quorum.

The Authority is endowed with certain statutory powers, including the power to "adopt, amend and repeal by-laws, rules and regulations not inconsistent with this act governing the manner in which the powers and purposes of the authority shall be carried out and effected." K.S.A. 27-331. However, the Authority has only limited powers since it has "only those powers prescribed by . . . [the enabling] act." K.S.A. 27-330. Moreover, Kansas law dictates that such political subdivisions have only those powers as are expressed or necessarily implied by the enabling statutes. See Wichita Public Schools Employees Union v. Smith, 194 Kan. 2 (1964), and Gragg v. U.S.D. No. 287, 6 Kan.App.2d 152 (1981).

Bylaws traditionally provide the internal workings by which an organization or entity operates. See Black's supra, p. 252; and K.S.A. 17-6009(b).

"The office of by-laws is to regulate the conduct and define the duties of the members toward the corporation and among themselves. (Thomp. Bldg. Assoc., 2d ed., §41.) The by-laws constitute the contract between the members which determines their rights, provided they do not violate the statute or public policy." Hogsett v. Loan Association, 78 Kan. 71, 78 (1908).

Obviously the MTAA can determine the dates, times and places of its meetings, and what procedures it will adopt for the execution of contracts. See Kan. Att'y Gen. Op. No. 82-146. However, the legislature, when it enacted K.S.A. 27-330 and 27-331, and especially K.S.A. 27-331(e) is presumed to have been aware of K.S.A. 77-201, Fourth, and the common law rules discussed above. See e.g., Att'y Gen. Op. No. 82-158.

Concerning K.S.A. 77-201, Fourth, the following language of the Kansas Supreme Court in Murray, supra, quoting 2 Am.Jur. 2d, Administrative Law, §196 is pertinent.

"It is sometimes provided by the law governing a particular board or commission that action may be taken by a majority of the membership or that the majority of the membership shall constitute a quorum for the transaction of business, or a general statute provides that words giving a joint authority to a majority of them, unless it is otherwise expressed in the act giving the authority. Such provisions are held to confer upon the majority all the authority conferred upon the whole, including the authority of a commission to organize at its inception, and the action of the majority cannot be stayed by the nonaction, forfeiture to qualify, absence, death or want of eligibility of the minority." (Emphasis added.) Murray, at 539. See also, Railway v. Meyer, supra, Coggins supra, State ex rel. Woodruff, supra.

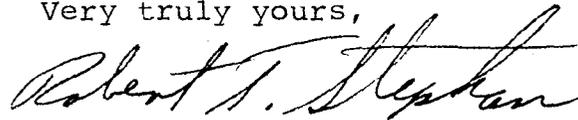
The proposal to raise the quorum requirements of the MTAA to four members would have the legal and practical effect of preventing three members of the authority from conducting the business of the MTAA. By statute, three members voting affirmatively govern the authority's actions. If two members were permitted to avoid a meeting, their absence thus denying the presence of a quorum, the remaining three members have been stripped of the statutory right granted by K.S.A. 77-201 Fourth.

Therefore, based upon the statutory and common law references cited herein and the lack of expressed or implied authority, it is our judgment that the MTAA does not have the authority to change its quorum requirements by amending it by-laws.

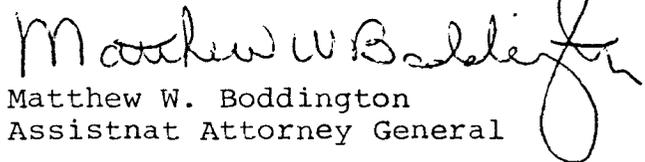
Resolution of your first question resolves the second, so we would only note that as a result, K.S.A. 75-4317 et seq., applies to all prearranged gatherings of MTAA members held to discuss the Authority's business if two of the five members are present since two members constitute a majority of a quorum of the five-member body. See K.S.A. 75-4317a.

In conclusion, it is our opinion that the MTAA is without authority to change its quorum requirements from a majority consisting of three directors to a number consisting of four directors.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Matthew W. Boddington  
Assistant Attorney General

RTS:BJS:MWB:hle