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ATTORNEY GENERAL OPINION NO. 84- 10

The Honorable Norman E. Justice
State Representative, Thirty-Fourth District
Room 279-W, State Capitol
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees --
Kansas Open Meetings Act -- Application of Act to
Non-Profit Corporation (Community Action Agency)

Synopsis: The Kansas Open Meetings Act is applicable to meetings of the Board of Trustees of the Economic Opportunity Foundation, Inc., and such meetings must be open to the public. Cited herein: K.S.A. 75-3036, 75-3734, K.S.A. 75-4317, K.S.A. 1983 Supp. 75-4318, 42 U.S.C.A. §2790, 42 U.S.C.A. §6861, 42 U.S.C.A. §9901, 42 U.S.C.A. §9904.

* * *

Dear Representative Justice:

As a state representative and a board member of the Economic Opportunity Foundation, Inc. (EOF), you request our opinion concerning the applicability of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., to the EOF.

The EOF was established by members of a committee created by a joint resolution of the city commission of Kansas City, Kansas, and the Board of County Commissioners of Wyandotte County, Kansas, in October, 1964 (Joint Resolution Nos. 19043 and 680) to combat poverty at the local level in connection with the Economic Opportunity Act of 1964 (42 U.S.C.A. §2790 et seq.). On January 13, 1965, three members of the committee incorporated the EOF as a non-profit community action corporation. See Articles of Incorporation of Economic Opportunity Foundation, Inc. The EOF was formally designated as an official community action agency for

purposes of the Economic Opportunity Act of 1964 by Joint Resolution Nos. 20901 and 839 on June 20, 1968. The EOF sponsors and directs numerous programs for low-income families (see the Annual Report 1981-1982 of the Economic Opportunity Foundation, Inc.) and receives in addition to private funds, county, state and federal moneys for implementation of its programs.

The EOF is governed by a 30 person board of trustees. The Board is composed of 10 representatives of the various city and county governmental representatives (who serve at the pleasure of the governmental officials), 8 representatives of local private sector organizations and 12 representatives elected at large by the residents of designated low-income areas. Bylaws of the Economic Opportunity Foundation, Inc., revised September 1982. (See also 42 U.S.C.A. §9904.)

Your question concerns whether the Board of Trustees, in the conduct of its monthly meetings, is subject to the provisions contained in the KOMA. K.S.A. 1983 Supp. 75-4318 reads in pertinent part as follows:

"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 in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot"

In order to determine whether the EOF is subject to this act, we must apply the following two-part test: Is this community action agency a legislative or administrative body of state or local government and is it supported in whole or in part by public funds. See Kansas Attorney General Opinion Nos. 79-219 and 79-284.

The term "public agency" is not defined in the Kansas open meetings law. However, prior Kansas Attorney General opinions have identified four criteria to be used in determining whether a body is a public agency:

"1) If the agency has the authority to make governmental decisions and act for the state, it is covered by an open meetings law. If it only collects information, makes recommendations or renders advice, it is not. McLarty v. Board of Regents, 231 Ga. 22, 200 S. E. 2d 117, 119 (1973).

2) Does the agency have independent authority in the exercise of its functions? Soucie v. David, 440

F. 2d. 1067 (D.C. Cir. 1971).

3) Is the agency subject to governmental audits or otherwise have its business procedures supervised? Rocap v. Indiek, 539 F. 2d. 174, (D.C. Cir. 1976).

4) Finally, one court has defined 'governmental agency' to include corporate instrumentalities that accomplish public ends, both governmental and proprietary. Ratan Public Service Co. v. Hobbes, 76 N.M. 535, 417 P.2d 32 (1966)." Kansas Attorney General Opinion Nos. 79-219 pp. 3, 4, 79-284 p. 3.

Our office has had at least four recent occasions to consider the application of the KOMA to corporations related to government and receiving public funds. In Kansas Attorney General Opinion No. 79-221 we concluded that a private nursing home was not subject to the state open meetings law as it did not exercise any powers of state or local government and its directors were not appointed by a government agency. Planned Parenthood of South-Central Kansas, Inc., was considered to be a private, non-profit corporation and thus not subject to the KOMA because there was so little control exercised by the county over the corporate operations. Kansas Attorney General Opinion No. 81-253 at 6. Likewise, the Kansas Cosmosphere and Discovery Center, Inc., was outside the scope of the open meetings law because the corporation did not administer a government program for which the county would otherwise be responsible, the corporate directors were not appointed by government and the county exercised no control over the corporation activities. Kansas Attorney General Opinion No. 82-256.

On the other hand, McPherson County Diversified Services, Inc., a privately organized non-profit corporation, is subject to the KOMA. Kansas Attorney General Opinion No. 79-284. There the Board of County Commissioners confirmed all appointments to the corporate board of directors, and required reporting on programs that otherwise would have been carried out by the county itself.

In our judgment EOF is similar to this latter situation. First, federal law specifies that "any non-profit private organization receiving assistance under this chapter [of the Economic Opportunity Act of 1964] which has responsibility for planning, developing and coordinating community anti-poverty programs shall be deemed to be a State or local agency." 42 U.S.C.A. §9904(e). See also Part C §8(h) of the Department of Social and Rehabilitation Services, State Economic Opportunity office, Procedure Manual for the Community Services Block Grant Program.

Second, the corporation was established by joint resolutions of

members of the Wyandotte County Commission and the city commissioners of Kansas City, Kansas in order to coordinate local anti-poverty programs to be funded by the federal government. Such functions would have been performed by the city and county but for the creation of this new corporation.

Thirdly, the county commission and city commissions of the respective cities located within the county continue to appoint one-third of the corporation's board of directors and thereby exercise considerable control and influence over the activities of the corporation.

Finally, the corporation is subject to reviews and audits by the State Economic Opportunity Office (SEOO) of the Kansas Department of Social and Rehabilitation Services. The EOF must provide a monthly fiscal report to the SEOO and must submit quarterly program reports to the SEOO. See Procedure Manual, supra, Part E.

Nothing in the information we have been able to gather regarding EOF suggests that the corporation is fundamentally a private entity which merely contracts with public bodies to deliver services for a fee. Instead, all indicia suggest that the corporation is indeed a functional arm of city-county government, and therefore, is to be viewed as an administrative body or agency within the meaning of the KOMA.

In applying the second part of the test, we find that the term "public funds" is not defined in the KOMA, however, many sources of funds have been considered to fall within this definition. See Open Meetings Profile; The Prosecutors View, Smoot and Clothier, 20 W.L.J. 241, 255, 256 (1981). The EOF receives many different types of funding for its programs. While it is not necessary to examine each and every source, suffice it to say that in addition to the local county mill levy that the corporation receives directly (.17% of its total budget), the EOF receives federal funds pursuant to 42 U.S.C.A. §9901 *et seq.*, and 42 U.S.C.A. §6861 *et seq.* Under these federal programs, each state is allocated a certain percentage of the total federal funds available. These funds are placed in the state treasury pursuant to K.S.A. 75-3734. When distributed by SRS to the local agencies, these funds are considered state funds. K.S.A. 75-3036.

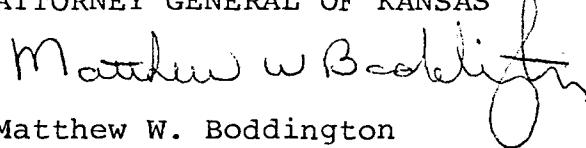
Upon reviewing the fiscal characteristics of the EOF, we find that 36% of its total funding is funneled through the state. Forty-three percent of its budget comes directly to EOF for certain programs but we find no indication that this money is anything but public funds. (See 1983 Budget of EOF.) Hence, we have no hesitancy in concluding that the EOF receives public funds within the meaning of the Kansas Open Meetings Act. Therefore, it is our opinion that the Kansas Open Meetings Act is applicable to meetings of the Board of Trustees of the Economic

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Opportunity Foundation, Inc., and such meetings must be open to
the public.

Very truly yours,


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cc: Honorable Cordell Meeks, Jr.
Connie Hadley

RTS:BJS:MWB:crw