



STATE OF KANSAS

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December 13, 1985

ATTORNEY GENERAL OPINION NO. 85- 175

The Honorable Robert J. Vancrum
State Representative, 29th District
9004 W. 104th Street
Overland Park, Kansas 66212

RE: State Departments; Public Officers, Employees--
Public Officers and Employees; Open Public Meetings--
Application of Act to Electric Cooperatives

Synopsis: Electric cooperatives organized pursuant to
K.S.A. 17-4601 et seq., are non-profit corporations
formed for the purpose of supplying electric
energy to their members and promoting and extending
the use of such energy. They are private business
corporations which are owned and controlled by the
members who receive their services. Such cooperatives
are not legislative or administrative bodies or
agencies of the state or its political and taxing
subdivisions, and do not receive or expend public
funds. Accordingly, they are not subject to the
requirements of the Kansas Open Meetings Act.
Cited herein: K.S.A. 17-4602; 17-4606; 17-4608;
17-4609; 17-4610; 17-4612; 17-4613; 17-4614; K.S.A.
75-4317; 75-4318, as amended by L. 1985, Ch. 284.

Dear Representative Vancrum:

You request our opinion concerning the applicability of
the Kansas Open Meetings Act, K.S.A. 75-4317 et seq.,
to electric cooperatives organized in Kansas pursuant to
K.S.A. 17-4601 et seq. As you correctly point out in the
memorandum accompanying your request, Kansas electric
cooperatives are non-profit membership corporations formed

for the purpose of supplying electric energy to their members and promoting and extending the use of such energy (K.S.A. 17-4602).

You indicate that meetings of electric cooperatives fall into four basic categories. These are:

- (1) General membership meetings called by the president, the board of trustees, by any three trustees, or by not less than 10% of the members (K.S.A. 17-4610). These meetings are for the purpose of conducting the business of the cooperative and elections to the board of trustees.
- (2) District meetings of the membership may also be called if the bylaws of the cooperative provide for the division of territory into districts (K.S.A. 17-4613). District meetings are for the purpose of nominating and electing trustees and district delegates.
- (3) Meetings of the board of trustees are called for the purpose of regulating and managing the business affairs of the cooperative consistent with the bylaws and articles of incorporation (K.S.A. 17-4612).
- (4) Cooperatives also occasionally call informal meetings primarily for the purpose of disseminating information to their membership directly and soliciting input concerning the operation of the cooperative. There are no statutory requirements for such informal meetings.

From your memorandum, it appears that electric cooperatives conduct their operations primarily with funds provided by payments from members for electrical service, insured or guaranteed loans through the Rural Electrification Administration of the United States Department of Agriculture, and loans from banks or other private lending sources. It is our understanding that the electric cooperatives of this state receive no legislative appropriations at either the state or federal level.

Needless to say, we have not examined each individual electric cooperative organized pursuant to K.S.A. 75-4317 et seq. to determine whether the circumstances surrounding its formation may have brought it within the scope of the Kansas Open Meetings Act. Instead, for the purposes of our opinion, we assume the facts presented in your memorandum. As noted, electric cooperatives supply electric energy and related services on an at-cost basis in the rural areas of this state. Payments for service in excess of operating costs are distributed to the members as patronage refunds prorated in accordance with the useage of the cooperative by individual customers. An electric cooperative is a business corporation voluntarily owned and controlled by its member/patrons who receive services on a not-for-profit basis.

Enabling legislation provides that electric cooperatives may be incorporated by five or more natural persons, or two or more cooperatives (K.S.A. 17-4606). The board of trustees adopts the first bylaws following the incorporation; however, members thereafter adopt, amend or repeal the bylaws by majority vote at meetings of the members (K.S.A. 17-4608). Members of cooperatives meet at annual or special meetings of members to transact the business of the cooperative (K.S.A. 17-4610), and to elect the board of trustees (K.S.A. 17-4612). K.S.A. 17-4609 further provides that only persons receiving electric energy or other services may become members. The bylaws may also prescribe additional qualifications and limitations in respect of membership, and shall prescribe the number of trustees, their qualifications, the manner of holding meetings, and a method for the removal of trustees (K.S.A. 17-4612). The board of trustees elects officers and may appoint any agents and employees it deems necessary or advisable (K.S.A. 17-4614).

The Kansas Open Meetings Act was enacted in 1972, with amendments to various sections thereof occurring in 1975, 1977, 1978 and 1985, and now appears at K.S.A. 75-4317 et seq. The legislative declaration of policy underlying the act is set out at K.S.A. 75-4317(a):

"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."

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. 75-4318(a), as amended by L. 1985, Ch. 284, Sec. 1, in pertinent part as follows:

"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 in part by public funds shall be open to the public . . ." (Emphasis added.)

From the foregoing statutory language, it is clear that for an entity such as an electric cooperative to be subject to the act it must: (1) be a legislative or administrative body of the state or a political or taxing subdivision; (2) receive or expend public funds; and (3) be supported in whole or in part by public funds. The act establishes both a functional test and a public funding test. In this instance neither prong of the test has been met. The electric cooperatives you have referenced, although organized and operated pursuant to a statutory scheme, are private business corporations which are owned and controlled by the members who receive their services. As such they are clearly not legislative bodies and exercise no administrative authority, nor are they legislative or administrative agencies of either the state or a political or taxing subdivision of the state. Rather, they are member-owned and governed organizations which are neither a part of government nor subordinate to any branch or agency of government, and do not fit into the category of entities contemplated by the act. Thus, the first prong of the test has not been met.

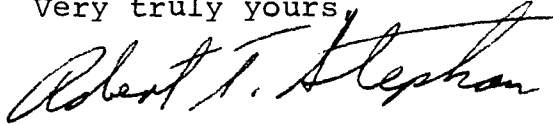
The second prong of the test must also fail in that electric cooperatives, under the circumstances presented, are not supported in whole or in part by public funds. Although it may be possible to form an electric cooperative which could conceivably fall within the reach of the Kansas Open Meetings Act, we are unaware of the existence of such an entity, and therefore express no opinion thereon at this time.

In conclusion, it is our opinion that, as the electric cooperatives of this state are not legislative or administrative

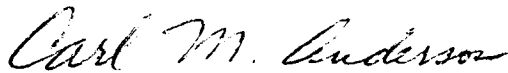
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bodies or agencies of the state, or political or taxing subdivisions thereof, and do not receive public funds, they are not subject to the Kansas Open Meetings Act.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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RTS:JSS:CMA:ssb