



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 38

Gary House
Sedan City Attorney
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P.O. Box 6
Sedan, Kansas 67361

Re: State Departments; Public Officers and Employees --
Public Officers and Employees -- Open Public
Meetings; Bodies Subject Thereto; Hospitals
Organized Through Donations

Synopsis: K.S.A. 75-4318 provides a two-part test that must be met before a body can be found to be included under the Kansas Open Meetings Act: (1) the body is either a legislative or administrative agency of the state or one of its political or taxing subdivisions or subordinate to such a body; and (2) the body receives, expends or is supported in whole or in part by public funds, or, in the case of subordinate groups, has a parent or controlling body which is so supported. Members of the board of trustees of the Sedan City Hospital are appointed by the Sedan City Council. Therefore, the board of trustees is a "subordinate group" of a legislative body which receives and expends public funds. Since both parts of the test are met, the board of trustees of the Sedan City Hospital is subject to the KOMA. Cited herein: K.S.A. 1985 Supp. 12-1615; K.S.A. 75-4317; K.S.A. 1985 Supp. 75-4318.

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Dear Mr. House:

As city attorney for the City of Sedan, you request our opinion concerning the applicability of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., to the board of trustees of the Sedan City Hospital. You inform us that the hospital in question was organized pursuant to K.S.A. 1985 Supp. 12-1615 through private donations. You also state that the Sedan City Hospital is not supported by a mill levy, although revenue bonds have been issued in the past to finance capital improvement projects.

K.S.A. 1985 Supp. 12-1615(b) provides that any person may donate money, personal property, or real estate to a city to establish a hospital. If the city does not own or control a public hospital, the statute provides as follows:

"[I]f there is no public hospital belonging to or under the control of such city, then the mayor of such city with the consent of the council, or the commissioners of any city under commission government, shall immediately name a five member board of trustees for such hospital, and upon qualification of such trustees, the title shall vest in such trustees, and in any such case, the title shall thereafter be held and controlled by such board according to the terms of the deed, gift, devise or bequest of such property; and as to such property, such board shall be held and considered to be special trustee."

Upon expiration of the terms of the original board members, new board members are to be appointed by the city council or commission. K.S.A. 1985 Supp. 12-1615(c).

The legislative declaration of policy underlying the Kansas Open Meetings 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."

K.S.A. 1985 Supp. 75-4318 defines the scope of the act 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"

The above language sets forth a two-part test which must be met before a body can be found to be included within the act's provisions: (1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions, or is subordinate to such a body; and (2) the body receives, expends, or is supported in whole or in part by public funds, or, in the case of subordinate groups, has a parent or controlling body which is so supported. See State ex rel. Murray v. Palmgren, 231 Kan. 524, 535 (1982).

The following guidelines were listed in Smoot and Clothier, Open Meetings Profile: The Prosecutor's Views, 20 Washburn L.J. 241, 256-57 (1981), to determine whether a public body is subject to the KOMA:

"First the group of people meeting together must be a 'body or agency' within the meaning of the Act. Second, the group must have legislative or administrative powers or at least be legislative or administrative in its method of conduct. Third, the body must be part of a governmental entity at the state or local level, whether it is the governing body or some subordinate group. Fourth, it must receive or expend public funds or be a

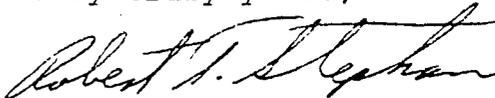
subordinate group of a body subject to the Act. Finally, it must be supported in whole or in part by public funds or be a subordinate group of a body which is so financed."

The facts presented here are very similar to those presented in State ex rel. Murray v. Palmgren, 231 Kan. 524 (1982). In that case the county commission appointed the county hospital board of trustees. Appellants argued the KOMA was vague because it was unclear whether "the board of trustees of a county hospital, must receive and expend public funds themselves to be included in the act or whether it is enough that only the parent body, such as the board of commissioners, receive and expend public funds." 231 Kan. at 53. The Kansas Supreme Court ruled:

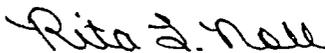
"The Thomas County Board of County Commissioners receives and expends public funds; the board of trustees of the Thomas County Hospital is a 'subordinate group thereof' and is therefore covered by KOMA." 231 Kan. at 54.

Members of the board of trustees of the Sedan City Hospital are appointed by the Sedan City Council, which has the power to levy taxes and acts legislatively in passing ordinances. Therefore, the board of trustees is a "subordinate group" of a legislative body which receives and expends public funds. Since both parts of the test provided in K.S.A. 75-4318 are met, we must conclude that the board is subject to the KOMA.

Very truly yours,



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Rita L. Noll
Assistant Attorney General

RTS:JSS:RLN:crw