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ATTORNEY GENERAL OPINION NO. 86- 143

The Honorable Robert F. Bennett  
Johnson County Bank Building, 2nd Floor  
5100 West 95th Street  
Prairie Village, Kansas 66207

Re: State Departments; Public Officers and Employees --  
Public Officers and Employees; Open Public Meetings  
-- Attendance at Executive Sessions

Synopsis: Only the members of a public body have the right to attend closed meetings of that body. Members of the five advisory boards in Unified School District No. 512, therefore, do not have the right to attend executive sessions held by the board of education. Advisory board members may attend such executive sessions upon invitation by the board of education to provide information to the body or participate in its deliberations, but may not attend merely as observers to gather information to aid them in making recommendations. Cited herein: K.S.A. 72-8121; 72-8122; 72-8123; 72-8134; 72-8205; 75-4317; K.S.A. 1985 Supp. 75-4318; K.S.A. 75-4319.

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Dear Governor Bennett:

As chief legal counsel for the Johnson county school system, Unified School District (U.S.D.) No. 512, you ask our opinion concerning the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq. Specifically, you ask whether members of the

district's advisory boards have the right to attend executive sessions held by the board of education.

U.S.D. No. 512 was formed under a special act, K.S.A. 72-8121 et seq., which unifies five member districts. A seven-member board of education governs the district. K.S.A. 72-8122; 72-8123; 72-8205. K.S.A. 72-8134(a) provides that each member district shall have a five-member advisory board elected by the school patrons residing in that district. The purpose of the five advisory boards is stated as follows:

"The advisory board of each member district shall serve to provide liaison between the citizens of the member district and the board of education of the unified school district. Each advisory board shall be responsible to make recommendations to the board of education on all matters relating to education . . . . On or before December 1 of each year each advisory board shall adopt its recommendations with respect to curricula and shall submit the same to the board of education of the unified school district. On or before February 1 of each year each advisory board shall make its recommendations on personnel and submit the same to such board of education. Each advisory board shall meet at least monthly at a time and place determined by it . . . ."  
K.S.A. 72-8134(b).

You inform us that a member of an advisory board wishes to be admitted to lawfully closed meetings of the board of education. It is contended that, since they are obligated by law to make recommendations on all matters relating to education, advisory board members have the right to attend executive sessions. The advisory board member maintains that advisory boards are precluded from making proper recommendations unless board members are privy to all discussions had by the board of education in executive sessions. It is also argued that advisory board members are entitled to participate in closed meeting discussions and to make recommendations to the board at that time.

Under the KOMA, meetings of public bodies must be open to the public. K.S.A. 1985 Supp. 75-4318(b) lists six subjects

which the public body may discuss in private. These exceptions to the open meetings principle "are founded on a determination that the business conducted by the body is such that the interests served by maintaining secrecy are more important than those promoted by informing the public." Note, Open Meetings Statutes: The Press Fights for the "Right to Know", 75 Harv. L. Rev. 1199, 1206 (1962). The KOMA states that "[u]pon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess . . . for closed or executive meetings." K.S.A. 75-4319(a). The only persons who have the right to attend executive sessions are the members of that particular public body. Meetings of the advisory boards are subject to the KOMA. See K.S.A. 1985 Supp. 75-4318. Members of the advisory boards, however, are not members of the U.S.D. No. 512 board of education and thus have no right to attend executive sessions held by the board of education.

We also note that advisory boards do not have the right to make their recommendations in closed meetings. An executive session may be called for this purpose if the subject of a particular recommendation is listed in K.S.A. 75-4319(b). In addition, it is not mandatory that these six subjects be discussed behind closed doors. Only the board of education may call an executive session of its body or it may choose to discuss these subjects in the open meeting.

The open meetings law does not specifically state who may attend closed meetings. At least two of the six subjects authorized for discussion in executive session imply the presence of persons other than members of the body. K.S.A. 75-4319(b) (2) (consultation with an attorney); K.S.A. 75-4319(b) (3) (matters relating to employer-employee negotiations). In Attorney General Opinion No. 80-43 we stated:

"So long as the procedural requirements of that section are followed, the board may include in its discussions in executive session those persons selected by the board to be present. See Blum v. Board of Zoning Appeals of North Hempstead, 149 N.Y.S. 2d 5, 8, 1 Misc. 2d 668 (1956), Thomas v. Board of Trustees, 215 N.E. 2d 434, 436, 5 Ohio App.2d 365 (1966)." Id. at 3.

Both cases cited therein defined an executive session as "one from which the public is excluded and at which only such selected persons as the board may invite are permitted to be present."

In Attorney General Opinion No. 82-176 we were asked whether a school board's practice of permitting members of the news media to be present during executive sessions was lawful. In concluding that this practice was contrary to the spirit and intent of the KOMA, we discussed which persons may properly attend executive sessions.

"We think the statute [K.S.A. 75-4319] generally permits public bodies to conduct executive sessions as they see fit. Such discretion to admit others is both required and necessary in some instances to facilitate the deliberations of the body. This commonly occurs when the non-members are persons who are providing information to, and participating in discussions with, the members of the government bodies . . . . However, we do not think the Act grants unbridled discretion in this regard.

. . . .

"In our judgment, the Act does not allow persons to attend executive sessions merely as observers. In such a role, the interests of the person or persons in attendance is indistinguishable from those of any other member of the public. Under such circumstances, persons are not admitted to the meeting to aid the governing body in its deliberations. Hence, the admission of some observers at the exclusion of others transforms the so-called executive session into a meeting at which the public should have access.

"Therefore in our opinion, a public body subject to the Kansas Open Meetings Act may not permit individuals or special interest groups, including members of the media, to attend executive sessions as mere observers while excluding the public

generally. Individuals may attend executive sessions of government bodies subject to the Act upon invitation where such persons are present to provide information to the body or participate in its deliberations but may not attend merely as observers." Id. at 4, 5.

In conclusion, it is our opinion that only the members of a public body have the right to attend closed meetings of that body. Members of the five advisory boards in U.S.D. No. 512, therefore, do not have the right to attend executive sessions held by the board of education. Advisory board members may attend such executive sessions upon invitation by the board of education to provide information to the body or participate in its deliberations, but may not attend merely as observers to gather information to aid them in making recommendations.

Very truly yours,



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