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ATTORNEY GENERAL OPINION NO. 87- 132

The Honorable Connie Ames Kennard
State Representative, Eighty-Fourth District
State Capitol Bldg., Room 279-W
Topeka, Kansas 66612

Re: Counties and County Officers -- County
Commissioners -- Home Rule Powers; Authority to
Raise Quorum Requirements

State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Quorum Requirements for Boards of County
Commissioners

Statutes; Administrative Rules and Regulations and
Procedure -- Statutory Construction -- Rules of
Construction

Synopsis: Unlike the statutes establishing quorum for each of the six categories of cities, there is no statute which specifically sets quorum for a board of county commissioners. K.S.A. 1986 Supp. 77-201 Fourth provides that a majority of a body of three or more members has authority to act on behalf of the entire body. In the absence of a specific provision, this statute applies to establish the majority of the membership as quorum for a public body. K.S.A. 1986 Supp. 77-201 uniformly applies to all county commissions, regardless of size. Therefore, boards of county commissioners cannot use county home rule powers to require more than a majority of its members to constitute a quorum.

The Kansas Open Meetings Act (KOMA) requires meetings of public bodies to be open to the public. A "meeting" is a prearranged gathering by a majority of a quorum of a public body to discuss the business of the body. A quorum of a five-member board of county commissioners is three, and a majority of a quorum is two. The provisions of the KOMA, then, are triggered when two or more commissioners plan to get together to discuss county business. Cited herein: K.S.A. 19-101; K.S.A. 1986 Supp. 19-101a; K.S.A. 19-201, 75-4317; 75-4317a; K.S.A. 1986 Supp. 77-201 Fourth; Kan. Const. Art. 12, § 5.

* * *

Dear Representative Kennard:

You have asked our opinion whether the Sedgwick County Board of County Commissioners had authority to change its quorum requirements by passing a resolution and whether such action violated the Kansas Open Meetings Act.

Kansas law provides that a board of county commissioners shall have three, five, or seven members. K.S.A. 19-201. The Sedgwick County Board of Commissioners (Board) is composed of five members. By resolution, the Board has raised its quorum of membership necessary to conduct county business to four commissioners. Before this action, a quorum of the Board was three members.

The Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., requires meetings of public bodies to be open to the public. A "meeting" is defined as a "prearranged gathering . . . by a majority of a quorum of the membership of a body . . . subject to the act for the purpose of discussing the business or affairs of the body." K.S.A. 75-4317a. In previous opinions we have stated that, unless otherwise specifically defined, a majority of the membership of the entire body constitutes a quorum, and that "majority" means the next whole number greater than half the total number of members. Attorney General Opinions No. 87-45, 86-110, 83-174. Therefore, for a five-member board, three persons would constitute a quorum and two persons would be a majority of the quorum. Thus, the KOMA prohibits two members of a public body from holding a closed meeting to discuss business. The Sedgwick County Board has established its

quorum at four members so that a majority of a quorum would be three. The apparent intent of the Board in raising its quorum requirement is to allow two commissioners to get together to discuss county matters without triggering the provisions of the KOMA.

In Attorney General Opinion No. 83-6, we concluded that city home rule powers permit the governing body of a city to establish by charter ordinance the quorum for that body. The question before us now is whether a board of county commissioners may establish its quorum in the same manner.

Under the Kansas Constitution a city may, pursuant to its home rule powers, exempt itself from all or part of an enactment by the legislature if the state enactment does not uniformly apply to all cities. Kan. Const. Art. 12, § 5. Kansas law provides for three classes of cities (based on size) and two forms of city government (commissioner-manager and mayor-council). There are six categories of statutes concerning governing bodies of cities, one for each combination of class and form of government. Each category includes a statute establishing the quorum for conduct of business of that body. The basis for our conclusion in Attorney General Opinion No. 83-6 was that the statute establishing quorum for a certain class and form of city government is not applicable to the other five categories of governing bodies. Since the quorum statutes are not uniformly applicable to all cities, the governing body of a city may establish its quorum by charter ordinance.

The question in Attorney General Opinion No. 83-174 was whether the five-member Metropolitan Topeka Airport Authority (MTAA) had authority to raise its quorum from three to four members. We stated that Kansas law gives a majority of the MTAA board of directors authority to act (K.S.A. 77-201 Fourth), and that the MTAA does not have implied or express constitutional or statutory authority to change its quorum requirements. Therefore, we concluded that, based on the Kansas statutes and common law, a quorum of the MTAA board is three, or a majority of the entire body.

By statute, K.S.A. 19-101, counties have home rule powers to determine their local affairs and government, subject to the limitations, restrictions, and prohibitions contained in K.S.A. 19-101a. One such restriction is that "[c]ounties [are] subject to all acts of the legislature which apply uniformly to all counties." K.S.A. 1986 Supp.

19-101a(a)(1). The statutes governing county commissions apply to all boards, regardless of size.

"Quorum" means "[t]he number of members who must be present in a deliberative body before business may be transacted." Blacks Law Dictionary 1130 (rev. 5th. ed. 1979). See Words and Phrases 629-630; 43 A.L.R. 2d 698, 716; 59 Am. Jur. 2d Parliamentary Law § 6. Unlike the provisions concerning cities, there is no statute concerning counties (chapter 19) which specifies the number of members necessary to constitute a quorum of a board of county commissioners. In the absence of a specific statute establishing quorum, the rules of statutory construction, K.S.A. 1986 Supp. 77-201, can be applied:

"In the construction of the statutes of this state the following rules shall be observed, unless the 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 [sic] that authority to a majority of them, unless it is otherwise expressed in the act governing the authority."

The above provision follows the Uniform Statutory Construction Act:

"§ 10. Joint Authority. A grant of authority to 3 or more persons as a public body confers the authority upon a majority of the number of members fixed by statute.

"§ 11. Quorum. A quorum of a public body is a majority of the number of members fixed by statute." 14 Uniform Laws Annotated 521 (1980).

K.S.A. 1986 Supp. 77-201 Fourth follows the common law:

"It is well settled that a majority of a quorum of a municipal or county governing

body has the right to take any action which is within the power of that entire body, unless the statute, charter, or bylaws governing the body provide otherwise. 56 Am Jur. 2d Municipal Corporations § 168. See 56 Am. Jur. 2d Municipal Corporations § 163.

"If an organization has a definite or limited number of members, the common-law rule is . . . that a majority of this limited number constitutes a quorum in the absence of a statute . . . defining a quorum." 59 Am Jur. 2d Parliamentary Law § 6.

Kansas case law makes it clear that a majority of public body of three or more members has authority to take action on behalf of the entire body. In a case concerning a board of county commissioners, the Kansas Supreme Court ninety years ago stated:

"[A] majority of a body of three or more, actually in existence as members of a tribunal, may determine the action of such tribunal without the concurrence of the others." Railway Co. v. Meyer, 58 Kan. 305, 310 (1897).

In Chambers v. Herrick, 172 Kan. 510 (1952), the Supreme Court ruled that the district court was "clearly erroneous" when it held that a hearing before the State Alcoholic Beverage Control Board of Review was illegal because only two of the three board members were present:

"G.S. 1949, 41-203, creates the Board of Review and provides that it shall consist of three members. The provision is silent on the question whether a majority of the board can legally act. However, we think the answer is to be found in G.S. 1949, 77-201 (Fourth). . . ." 172 Kan. at 514.

The argument was made in Wycoff v. Board of County Commissioners, 191 Kan. 658 (1963), that a county commission was not qualified to act when it determined the sufficiency of a petition calling for an election to move the

county seat of Logan County from Russell Springs to Oakley. The Supreme Court ruled:

"While the record indicates that Kronvall [a commissioner] had not taken and filed his oath of office on September 7, 1960, the remaining two commissioners, Fulton and Uhrich, had previously qualified by filing their oaths of office (G.S. 1949, 54-106) and they were authorized as the majority of the board to adopt the resolution finding the petition sufficient for calling the election. (G.S. 1949, 77-201, Fourth.)" 191 Kan. at 673.

Thus, the quorum of a five-member board of county commissioners is three as Kansas law provides that a majority of the members of a public body composed of three or more members has authority to act for that body. K.S.A. 1986 Supp. 77-201 Fourth uniformly applies to all counties. The governing body of a county, therefore, cannot use its home rule powers to raise its quorum requirements.

In summary, unlike the statutes establishing quorum for each of the six categories of cities, there is no statute which specifically sets quorum for a board of county commissioners. K.S.A. 1986 Supp. 77-201 Fourth provides that a majority of a body of three or more members has authority to act on behalf of the entire body. In the absence of a specific provision, this statute applies to establish the majority of the membership as quorum for a public body. K.S.A. 1986 Supp. 77-201 uniformly applies to all county commissions, regardless of size. Therefore, boards of county commissioners cannot use county home rule powers to require more than a majority of its members to constitute a quorum.

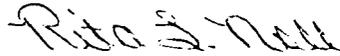
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Very truly yours,



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