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September 28, 1987

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ATTORNEY GENERAL OPINION NO. 87-143

The Honorable Don M. Rezac
State Representative, Sixty-First District
R.R. #1
Onaga, Kansas 66521-9801

Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Bodies Subject Thereto; Three Rivers, Inc.

Synopsis: A private, nonprofit corporation is subject to the
Kansas Open Meetings Act if it receives public
funds in its operations and acts as a governmental
agency in providing services to the public. As
Three Rivers, Inc. appears to be such an agency, it
is, in our opinion, subject to the Act. Cited
herein: K.S.A. 75-4317; 75-4317a; K.S.A. 1986
Supp. 75-4318.

Dear Representative Rezac:

As State Representative for the Sixty-First District, you ask
our opinion whether the Board of Directors of Three Rivers,
Inc. is a public body subject to the provisions of the Kansas
Open Meetings Act (KOMA), K.S.A. 75-4317 et seq.

Three Rivers, Inc. is a private, nonprofit corporation
organized under the laws of the State of Kansas. The purpose
of the corporation is stated in Article II of its by-laws:

"The purpose of Three Rivers, Inc. is to
enhance the capacity of disabled persons
living in Pottawatomie and Riley
counties to control their own lives to the
maximum extent possible."

Article IX of the by-laws provides that "Three Rivers, Inc. is organized exclusively for charitable and educational purposes. . . ." The corporation's board of directors operates the Three Rivers Independent Living Resource Center (Center), a rural center for independent living for disabled persons. Three Rivers' yearly budget for the Center is funded by a \$50,000 grant from Pottawatomie County and a \$40,000 grant from the Department of Social and Rehabilitation Services (SRS). To be eligible for the grant the Center must meet SRS guidelines. Three Rivers' annual budget and any budget revisions are subject to SRS approval. In addition, monthly and yearly reports must be submitted to SRS.

You ask whether the Board of Trustees must comply with the KOMA. By its terms, the Act applies to:

"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" K.S.A. 1986 Supp. 75-4318(a).

The above language sets forth a two-part test which must be met for a body 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. It is clear that the second prong of this test is met as Three Rivers receives public funds from both the county and the state for the Center.

Receipt of public funds will not subject an entity to the provisions of the KOMA unless the first test is also met. See Attorney General Opinions No. 82-256 (Kansas Cosmosphere); 81-253 (planned parenthood); 81-94 (Hayden high school); 79-221 (private nursing home). The more difficult question is whether Three Rivers is an administrative agency of the state. The term "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)." Attorney General Opinions No. 84-10 pp. 2-3; 79-219 pp. 3, 4; 79-284 p. 3.

Examination of the above criteria in Attorney General Opinion No. 79-219 led to our conclusion that area agencies on aging which were private, nonprofit corporations not affiliated with local governments were covered by the KOMA. We stated that, while the state department provided funding and approved the agencies' plans, the local agencies themselves had considerable influence over the program. "In essence, the area agencies do a great deal of the state department's work, at least on a local level. This would seem to constitute 'governmental affairs' of the kind that the Act intended to be open to public scrutiny" (p. 4).

In Attorney General Opinion No. 79-284, we were asked whether the Board of Directors of McPherson County Diversified Services, Inc., was subject to the KOMA. MCDS, a nonprofit corporation which operated almost totally on moneys derived from tax revenues, provided social services to the developmentally disabled citizens of McPherson County. In

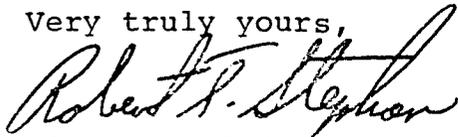
concluding that the entity was subject to the KOMA, we noted that the Board was required to report to the county commission concerning the handling of its funds and the types of services it provided. We also stated:

"MCDS provides programs which would otherwise have to be offered by the state or one of its political and taxing subdivisions, if they were to be offered at all. This would seem to constitute "governmental affairs" of the kind which the Act intended to be open to public scrutiny, since the way in which such tax-supported programs are run would be of keen interest to many citizens." (p.3)

After examining the above-listed factors and our prior opinions, we conclude that Three Rivers, Inc. meets the first test as it operates as an administrative agency. The Independent Living Resources Center must meet state guidelines and be approved by the state. The actual operation of the Center, however, rests with the Board of Directors. In providing services for disabled persons, it appears that Three Rivers is carrying on an activity that would otherwise be handled by a governmental subdivision. Since both tests are met, it is our opinion that Three Rivers, Inc. must comply with the provisions of the KOMA.

In summary, it is our opinion that a private, nonprofit corporation is subject to the Kansas Open Meetings Act if it receives public funds in its operations and acts as a governmental agency in providing services to the public. As Three Rivers appears to be such an agency, it is subject to the Act.

Very truly yours,



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