



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 25

Harold T. Walker
City Attorney
City of Kansas City
Ninth Floor, Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: State Departments; Public Officers and Employees --
Public Officers and Employees -- Open Public
Meetings; Subordinate Groups; Personnel Matters

Synopsis: The Mayor's Commission on Governmental Efficiency is subject to the provisions of the Kansas open meetings act as it is a subordinate body of the city's governing body. Discussions concerning consolidation of departments and the addition or elimination of job functions or positions may not be held in executive session under the "personnel matters" exception. Cited herein: K.S.A. 75-4317; K.S.A. 1987 Supp. 75-4318; K.S.A. 75-4319.

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Dear Mr. Walker:

As attorney for the city of Kansas City, you ask our opinion whether the Mayor's Commission on Governmental Efficiency is subject to the Kansas open meetings act. If so, you also ask whether certain discussions of the Commission may be held in executive session pursuant to the "personnel matters" provision.

You inform us that by resolution the city council of Kansas City created the Mayor's Commission on Governmental Efficiency (Commission). The Commission is composed of five persons appointed by the mayor upon recommendation from the council members. You state that the purpose of the Commission is to "undertake a broad based investigation and evaluation of the city budget and operations resulting in the presentation of recommendations to the council designed to operate city government more efficiently with a savings of tax dollars." No specific monetary funding has been allocated to the Commission, and the Commission has been granted no authority by the city council to retain employees or consultants. The city council has furnished the Commission with supplies and a secretary on a part-time basis.

The Kansas open meetings act (KOMA), K.S.A. 75-4317 et seq., requires meetings of public bodies to be open to the public. By its terms the KOMA applies to

"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. 1987 Supp. 75-4318(a). (Emphasis added).

Clearly, the Commission is a body subordinate to the city council. The fact that the Commission does not itself directly receive or expend public funds is of no consequence. In State ex rel., Murray v. Palmgren, 231 Kan. 528 (1982), the Kansas Supreme Court ruled that, as long as the parent body is supported by public funds, all subordinate groups of that body are automatically covered by the KOMA, regardless of whether they also receive or spend public funds. Therefore, meetings of the Mayor's Commission on Government Efficiency must be in compliance with the provisions of the KOMA.

You also ask whether the Commission may recess into an executive session to discuss certain issues under the "personnel matters of non-elected personnel" exception. K.S.A. 75-4319(b)(1). Specifically, the question is whether the Commission may discuss issues such as consolidation of departments, elimination or addition of job functions, and

other matters to promote efficiency and reduce expenditures that may ultimately involve identifiable personnel. You state that the discussion would not address a particular employee, but rather the need for the position or function performed by that particular employee. We agree with your conclusion that the Commission may not recess into an executive session under the personnel matters exception for this purpose.

K.S.A. 75-4317(a) provides that "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." The Kansas Supreme Court has discussed this statute as follows:

"Obviously, the intent behind the statute [K.S.A. 75-4317(a)] is to protect the public. In Johnson v. Killion, 178 Kan. 154, 158-59, 283 P.2d 433 (1955), this court stated: 'It is fundamental that where a statute is designed to protect the public, the language must be construed in the light of the legislative intent and purpose and is entitled to a broad interpretation so that its public purpose may be fully carried out.' See also Smith v. Marshall, 225 Kan. 70, 75, 587 P.2d 320 (1978)." State ex rel. Murray v. Palmgren, 321 Kan. 524, appeal dismissed 459 U.S. 1081, 103 S.Ct. 562, 74 L.Ed.2d 927 reh. denied 459 U.S. 1229, 103 S.Ct. 1238, 75 L.Ed.2d 471 (1982).

In Memorial Hospital Ass'n, Inc. v. Knutson, 239 Kan. 663, 669 (1986), the court said:

"The KOMA is remedial in nature and therefore subject to broad construction in order to carry out the stated legislative intent."

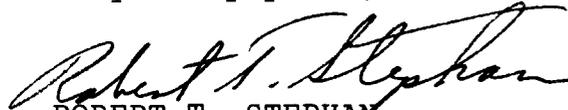
Therefore, the presumption of the KOMA is in favor of openness and exceptions to the KOMA are narrowly construed. See Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State?, 25 U. Kan. L. Rev. 169, 175 (1977). The exceptions to the KOMA permitting certain subjects to be discussed behind closed doors were enacted on the basis that in certain instances the interests involved in preserving

confidentiality outweigh the public's right to know. See Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.J. 241, 274 (1981). The purpose of the "personnel matters of non-elected personnel" exception is to "protect the privacy of employees, saving personal reputations, and encouraging qualified people to select and remain in the employ of government." (Emphasis added.) Smoot and Clothier at 275. See Tacha at 195.

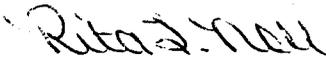
In Attorney General Opinion No. 81-39 we opined that a public body may recess into executive session to discuss individual employees, but that "[d]iscussions concerning groups of employees which do not infringe upon the individual are beyond the purposes for which the exception for personnel matters was created." The proposed discussions do not concern employees as individuals but relate to policy matters and the functions and duties of employee positions. Therefore, the privacy interests of individual employee reputations is not at stake, and the public's right to know of discussions concerning such policy matters is paramount. We must conclude that the Commission may not recess into executive session under the personnel matters exception for such discussions.

In summary, the Mayor's Commission on Governmental Efficiency is subject to the provisions of the Kansas open meetings act as it is a subordinate body of the city's governing body. Discussions concerning consolidation of departments and the addition or elimination of job functions or positions may not be held in executive session under the "personnel matters" exception.

Very truly yours,



ROBERT T. STEPHAN
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Rita L. Noll
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