



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 31

Charles A. Zimmerman
City Attorney
Municipal Building
7th & Jefferson
P.O. Box 287
Junction City, Kansas 66441

Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Executive Sessions; Applicability of; Persons
Entitled to Attend; Actions at

Summary: K.S.A. 75-4318 permits a city's grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a grievance committee, while otherwise subject to the KOMA, is acting in a quasi-judicial manner within the scope of authority of that committee. Prior to such deliberations, K.S.A. 75-4319 permits the grievance committee to recess from an open meeting into a closed or executive session for the purpose of discussing personnel matters of non-elected personnel, and thus, employment related grievances of individual employees of the city may discretionarily be discussed in a properly recessed executive or closed session. Individuals who aid the committee in such a discussion may be discretionarily permitted into such a closed or executive session. However, binding decisions by the committee must be

made in an open meeting. Cited herein: K.S.A.
13-527; 13-2101; 75-4317; 75-4317a; 75-4318;
75-4319; Kan. Const., Art. 5, § 12.

* * *

Dear Mr. Zimmerman:

As city attorney for the city of Junction City, Kansas, you request our opinion on the Kansas open meetings act (KOMA), K.S.A. 75-4317 et seq., as it applies to an employee policy handbook which establishes employee grievance procedures. Section 12 of the employee handbook adopts a city grievance policy. Section 12.1 permits utilization of the grievance policy by "any regular employee" of the city in order to allow those employees "the right to air valid complaints and/or concerns regarding matters affecting his/her employment which (s)he considers unjust." The grievance claim will be denied if the grievant has no direct interest. Section 12.3 establishes the grievance procedures and 12.3.C discusses the composition and appointment of a grievance committee.

We concur with your initial conclusion that this grievance committee is subject to the provisions of the KOMA set forth at K.S.A. 75-4317 et seq. See K.S.A. 75-4318(a); Memorial Hospital Association, Inc. v. Knutson, 239 Kan. 663, 671 (1986); Murray v. Palmgren, 231 Kan. 524, 535 (1982); In re Arbitration, 233 Kan. 527, 528 (1983); Attorney General Opinions No. 86-84, 86-48, 84-81 and 80-201; Smoot-Clothier "Open Meetings Profile: The Prosecutor's View," 20 W.L.J. 241, 250, 256 (1981); and Tacha "The Kansas Open Meetings Act: Sunshine on the Sunflower State?," 25 K.L.R. 169, 188 (1977). We note that the title of the gathering of the public body or the name of the public body is not determinative of the applicability of the KOMA. If the public body meets the tests set forth in K.S.A. 75-4318(a), its meetings (as defined by K.S.A. 75-4317a) must be conducted pursuant to the KOMA.

The grievance committee established pursuant to section 12.3.C of the Junction City employee handbook conducts hearings in accordance with section 12.3.C.4. This procedure permits presentation of facts by the department head or supervisor of the aggrieved employee, witnesses called by either the employee or the department head or supervisor and, at the conclusion of the hearing, a written report by the chairman of

the grievance committee to the city manager containing the conclusion of the grievance committee. Section 12.3.C.5 provides that this hearing will be closed to the general public. It is this closure provision that generates your opinion request.

It is your opinion that while deliberating, the grievance committee is acting in quasi-judicial manner, and thus, that its deliberations are not subject to the KOMA, pursuant to K.S.A. 75-4318(a). You also opine that when receiving testimony and other evidence concerning the merits of the employee's grievance, the committee may recess for a closed executive session pursuant to K.S.A. 75-4319(b)(1). Based upon the facts you provide, we agree with these conclusions.

K.S.A. 75-4318(a) states: "[b]ut any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving quasi-judicial functions." (Emphasis added). Quasi-judicial is defined as "a term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Blacks Law Dictionary 1121 (5th ed. 1979).

The city, which has adopted the employee handbook in question, has much authority concerning employee matters. See K.S.A. 13-527; 13-2101 et seq.; Kan. Const., Art. 12, § 5. Some of this authority has been delegated by the city to the grievance committee. The functions exercised by the grievance committee are those which the city has authorized the grievance committee to administer and the activities engaged in by the grievance committee include determining facts, holding hearings, drawing conclusions from the facts, and exercising discretion of a judicial nature. Thus, the grievance committee is an administrative body which is authorized by law to exercise quasi-judicial functions. Therefore, it is our opinion that deliberations of the grievance committee which follow a hearing may be conducted outside the scope of the KOMA, pursuant to K.S.A. 75-4318(a). Please note that this exception to the applicability of the KOMA applies only to deliberations. Quasi-judicial bodies otherwise subject to the KOMA must conduct non-deliberative discussions according to the provisions of the KOMA.

K.S.A. 75-4319 permits bodies subject to the KOMA to recess open meetings into closed or executive sessions if the correct procedures are followed and if the discussion during such a closed or executive session is limited to the topics set forth at K.S.A. 75-4319(b). As you correctly note, K.S.A. 75-4319(b)(1) permits closed or executive sessions for personal matters of non-elected personnel. Attorney General Opinion No. 81-39 examined this personnel matter exception to the KOMA and concluded that it could be used to discuss individuals, not groups. Attorney General Opinion No. 87-10 stated that the term personnel refers to employees of public agencies and not to persons appointed to boards or committees. See also Attorney General Opinion No. 87-169. If the proper procedures are followed, K.S.A. 75-4319(b)(1) may be utilized by the grievance committee to discuss personnel matters related to a specific employee in a closed or executive session. Topics that do not concern a specific individual and personnel matters involving that individual must be discussed in open session unless the meeting is closed pursuant to other authority.

You note that the grievance committee will allow individuals who are not on the committee into closed or executive sessions. As discussed in Attorney General Opinion No. 87-170 and 86-143, only the members of the public body have a right to attend executive sessions. Mere observers may not attend. However, persons who aid the body in a permissible discussion may be discretionarily admitted by the public body. Thus, if they provide such aid, the employee in question, or witnesses providing information concerning a personnel matter, may be permissibly admitted to an executive or closed session recessed pursuant to K.S.A. 75-4319(b)(1).

While deliberations of quasi-judicial bodies engaged in quasi-judicial matters are not subject to the KOMA, reaching a conclusion is not deliberating. Moreover, K.S.A. 75-4319(c) prohibits binding action from being taken during executive or closed recesses. Thus, the grievance committee must take any binding action in an open session.

In summary, it our opinion that K.S.A. 75-4318(a) permits the city grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a committee appears to be an administrative body that is authorized by law to exercise quasi-judicial functions. Prior to such deliberation, K.S.A. 75-4319(b)(1) permits such a grievance committee to recess from an open meeting into a closed or executive session for

from an open meeting into a closed or executive session for the purpose of discussing personnel matters of non-elected personnel. Employee grievances concerning employment matters may, in some situations, be characterized as a personnel matter. Thus, employment related grievances of an individual employee of the city may be discussed in a properly recessed executive or closed session. Individuals who aid the committee in such a discussion may be discretionarily permitted into such a closed or executive session. However, neither K.S.A. 75-4318(a) nor K.S.A. 75-4319(b) permit binding decisions to be made outside of an open meeting. Thus, binding decisions made by bodies subject to the KOMA must be made in an open meeting.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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