

MINUTES OF THE SPECIAL STUDY COMMITTEE ON SOCIAL AND REHABILITATIVE  
INSTITUTIONS

Held in Room 254-E at the Statehouse at 2:45 p.m., on January 23, 1980.

Members present were:

Senator Robert Talkington, Chairman  
Representative Joe Hoagland, Vice Chairman  
Senator Mike Johnston  
Representative Phil Martin  
Representative David Heinemann

Staff present were:

Fred Carman, Revisor's Office  
Emalene Correll, Legislative Research Department  
Marlin Rein, Legislative Research Department  
Ray Hauke, Legislative Research Department  
Robert A. Coldsnow, Legislative Counsel

Conferees appearing before the committee were:

None

Senator Talkington opened the organizational meeting and stated its purpose was to discuss aspects of the study assigned to it. The charge to the committee as stated by the Legislative Coordinating Council (page 2 of Attachment A) was read, the committee's responsibility being to study the management structure and utilization of personnel in state institutions operated by the Department of Social and Rehabilitation Services and to report its findings to the Legislative Coordinating Council during the 1980 legislative session.

Senator Talkington stated that a number of people working in state institutions want to appear before the committee but want to do so only in private with an assurance of confidentiality. He stated they have been advised that the committee was subject to the state's open meetings law and has no authority to restrict anyone from observing its open meetings. The possibility of holding executive sessions was discussed. Mr. Coldsnow furnished members with a copy of the Open Public Meetings Law (Attachment B) which would give this committee authority to go into executive session, pointing out no binding action could be taken during these sessions, listing the subjects which could be discussed, and requiring proof of necessity for going into executive session.

The Chairman asked members for their comments regarding the use of executive sessions. Representative Hoagland stated he had no objections to executive sessions but felt the committee should utilize them only when the weight of evidence indicated there was a clear and convincing need to do so.

Representative Heinemann felt that most state employees give information only in confidence because they fear retribution in their job situations. He felt, in order to protect their rights of

privacy, executive sessions would be appropriate under certain circumstances.

Representative Martin stated that because of the possibility of some subject matter being discussed that might put treatment of patients and residents or job security in jeopardy, executive sessions might be necessary but only in extreme cases.

Senator Johnston noted that, for purposes of job security, some employees have reservations about appearing before the committee, and he questioned if a clear committee policy regarding suppression of minutes should be established. The possibility of omitting names from minutes was discussed, and Mr. Coldsnow noted that minutes were not always kept during executive sessions. It was also pointed out that probably such minutes could not be subpoenaed unless action on persons named in executive session minutes was taken in open session. The Chairman pointed out there was no way of protecting any person appearing before the committee from being seen when they enter the meeting room. He felt these persons should be advised that the committee can protect their statements but cannot protect the fact they have appeared.

Mr. Carman asked whether any interested employees had requested immunity from prosecution. Senator Talkington said no one had requested immunity. He further pointed out that the committee was not concerned with prosecution of any criminal activities which may be revealed during this study, but these activities would be turned over to the Attorney General. The need for cooperation from the Attorney General was noted.

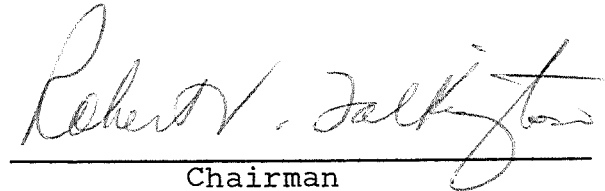
There was further discussion regarding how many people had requested to appear, and the suggestion was made that former employees be asked to appear. The Chairman pointed out again there was a large number of people who wished to appear only in secret, and he noted it would be impossible to hear an unlimited number of people in executive session. Whatever action was taken by the committee during open session could not be based upon what was revealed in executive session since that action must be substantiated. It was the concensus of opinion of the committee that executive sessions should be kept to an absolute minimum. Representative Martin pointed out that it is important that employees of these state facilities understand that the committee is trying to do an objective job, and employees should be informed they have a right to appear and there should be no retribution. It was felt that notices of the committee's hearings should be posted in the institutions affected.

Future meeting times and places were discussed. The next two meetings were scheduled for January 29 and 31 at which times Senator Winter, Senator Reilly, and Representative Cameron, who were involved in the interim matters relating to this study, would be asked to appear. It was also felt that Secretary Harder should be asked to share with the committee the new procedures his department has instigated in these

institutions since the interim investigative report.

Mr. Coldsnow was directed by the Chairman to write Secretary Harder a letter asking him to notify all institutions of the committee's study and its scope and to advise all employees there should be no retribution as a result of their appearing before the committee.

The meeting was adjourned at 3:25 p.m.

  
Chairman

Item 1

Approved  
1/14/80

## MINUTES

## LEGISLATIVE COORDINATING COUNCIL

December 10, 1979

## Members present:

President Ross O. Doyen, Chairman  
Speaker Wendell Lady, Vice Chairman  
Senator Norman Gaar, Majority Leader  
Senator Jack Steineger, Minority Leader  
Representative Bob Arbuthnot, Speaker Pro Tem  
Representative Bob Frey, Majority Leader  
Representative Fred Weaver, Minority Leader

The meeting was called to order at 9:30 a.m. in Room 527-S, of the State Capitol.

Rep. Weaver moved that the minutes of November 9, 1979, be approved. Speaker Lady seconded the motion and the motion carried.

OSAWATOMIE STATE HOSPITAL--INVESTIGATION

Chairman Doyen called attention of members of the Council to copies of a letter from Attorney General Stephan in which he stated that his investigation of alleged criminal activity at the state institutions was continuing and that he would report additional action taken by his office and the KBI as the investigation continued. Rep. Weaver stated that he had reviewed the information and the report received from both the office of the Attorney General and from Dr. Harder and that in his opinion the department and personnel of the institutions have taken action on their own to correct much of the problem. He also stated that a legislative investigating committee could not go further than the office of the attorney general and the KBI have already gone in investigating the specific incidents prompting the investigation and therefore the LCC should refer the matter to the standing committee on ways and means of the house reviewing the budget of such agency for study and review and for its recommendation as to necessary action by the legislature. Senator Steineger stated that he would not suggest an investigation of specific complaints but rather a study or review of the management structure of the institutions and the financial exposure which the state has incurred in the operation of the institutions under the tort claims act. He stated that the membership of the committee should include attorneys for the purpose of evaluating such exposure or risk and he doubted if a standing committee on ways and means would have the time to devote to such a study.

Senator Gaar suggested that a special subcommittee appointed from both standing committees on ways and means would be more workable. Chairman Doyen agreed and suggested that a five member committee be appointed.

After further discussion by all members of the Council, Rep. Weaver moved that a special study committee composed of two senators and three representatives to be appointed by the president and speaker with the approval of the minority leaders of the respective houses; that such members be predominately, but not exclusively, members serving on the standing committees on ways and means; that such committee be directed to study and review the management structure and utilization of personnel in state institutions operated by the department of SRS and the potential liability or financial exposure incurred by the state in the operation of such institutions and to make a report and recommendations thereon to the LCC during the 1980 regular session of the legislature. Senator Gaar seconded the motion and the motion carried.

Senator Gaar moved that Legislative Counsel Coldsnow act as counsel for the special study committee. Rep. Arbuthnot seconded the motion and the motion carried.

Dr. Robert Harder, Secretary of SRS, reported briefly on actions taken by his department to resolve problems prompting the investigation and stated that he would work with and provide such information to the committee appointed by the LCC.

RECEIPT AND ACTION ON REPORTS BY LCC

A report was received from the ad hoc committee on Nichols Gymnasium pursuant to Section 1 of Chapter 25 of the Session Laws of 1979. Rep. Arbuthnot reviewed such report and responded to questions from other members of the Council thereon.

A report of the current annual cost per student for undergraduate medical instruction at the University of Kansas was received from Chancellor Archie Dykes as required by Section 9 of Chapter 29 of the Session Laws of 1979.

A report of the annual cost per student for undergraduate veterinary medical instruction at Kansas State University was received from Daniel Beatty, Vice President for Business Affairs, pursuant to Section 4 of Chapter 29 of the Session Laws of 1979.

A report of the KSU Food and Feed Grains Institute was received from the KSU Department of Grain Science and Industry as provided by Section 3 of Chapter 29 of the Session Laws of 1979.

It was recalled that the Council had previously received the final report and recommendations of the consulting firm of Flack and Kurtz relating to the energy study at Kansas State University as provided by Section 18 of Chapter 33 of the Session Laws of 1979, but that no action had been taken thereon.

## OPEN PUBLIC MEETINGS

### Law Review and Bar Journal References:

Extensively discussed in "The Kansas Open Meetings Act of 1972," Jerry L. Harper, 43 J. B. A. K. 257 et seq. (1974).

**75-4317. Open meetings declared policy of state.** (a) In recognition of the fact that a representative government is dependent upon an informed electorate, 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.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

History: L. 1972, ch. 319, § 1; L. 1975, ch. 455, § 1; July 1.

### Law Review and Bar Journal References:

This and following sections discussed in "The Kansas Open Meeting Act: Sunshine on the Sunflower State?" Deanell R. Tacha, 25 K. L. R. 169, 170, 171, 174, 177, 178, 179, 189, 199, 203 (1977).

### CASE ANNOTATIONS

1. Question of right of public to attend party caucus moot; under facts no additional relief could be granted. *Burnett v. Doyen*, 220 K. 400, 401, 552 P.2d 928.

**75-4317a. Meeting defined.** As used in this act, "meeting" means any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this fact for the purpose of discussing the business or affairs of the body or agency.

History: L. 1977, ch. 301, § 1; July 1.

**75-4313. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices.** (a) Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, 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 shall be open to the public and no binding action by such bodies shall be by secret ballot, but 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 such quasi-judicial functions.

## Attachment B

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such information, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition; and

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the information required by subsection (b).

(d) Prior to any meeting hereinabove mentioned, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting said agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a) of this section, but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

History: K.S.A. 75-4318; L. 1978, ch. 361, § 1; July 1.

### Law Review and Bar Journal References:

Mentioned in "Survey of Kansas Law: Municipal Corporations," Richard H. Seaton, 27 K.L.R. 269, 273 (1979).

### CASE ANNOTATIONS

3. Unannounced gathering prior to scheduled meeting constituted violation of open meetings law. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 423, 581 P.2d 817.

4. Meetings in "executive sessions" of regional planning commission did not vitiate its actions. *International Villages, Inc., of Amer. v. Board of Comm'rs of Jefferson Co.*, 224 K. 654, 659, 585 P.2d 999.

**75-4319. Closed or executive meetings, when; no binding action.** (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following: (1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) consultations with the representative of the body or agency in employer-employee negotiations;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if he or she so requests; and

(6) preliminary discussions relating to the acquisition of real property.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

History: L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; July 1.

**Law Review and Bar Journal References:**

Discussed in "The Kansas Open Meeting Act: Sunshine on the Sunflower State?" Deanell R. Tacha, 25 K.L.R. 169, 192, 193, 196, 199 (1977).

**75-4320. Penalties.** (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318 shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed five hundred dollars (\$500) for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within ten (10) days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

History: L. 1972, ch. 319, § 4; L. 1977, ch. 301, § 4; July 1.

**Law Review and Bar Journal References:**

Discussed in "The Kansas Open Meeting Act: Sunshine on the Sunflower State?" Deanell R. Tacha, 25 K. L. R. 169, 180, 197 (1977).