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Question Submitted by: Robert Macy, District Attorney, Oklahoma County

1981 OK AG 69

Decided: 04/02/1981

Oklahoma Attorney General

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¶10 The Attorney General has received your request for an official opinion, wherein you inquire, in effect:

1. Is the city council of a charter city subject to the provisions of the Open Meeting Act, 25 O.S. et seq. (1977)?
2. Do matters pertaining to the proposed termination of a city manager fall within the meaning of "regular business of a public body" as stated in 25 O.S. 304(3) (1977)?
3. May a city council dismiss or demand the resignation of the city manager by a vote taken outside a public meeting or executive session and without notice to the public?
4. May a single member of a city council lawfully meet privately with each of the other council members separately, obtain signatures of a majority of the council on a document and use that document to take an action otherwise required to be considered and voted upon at an open meeting?
5. Does a provision in a city charter providing that the city council may appoint, suspend or remove the city manager "at any time", allow the city council to so act without an open meeting?

¶11 *Oklahoma Ass'n of Mun. Atty's. v. State, and Derryberry*, Okl., 577 P.2d 1310 (1978) recognized that one of the policies sought to be advanced by the Legislature in adopting the Open Meeting Act was to facilitate an informed citizenry's right to participate in government and understand why government acts affecting their daily lives are taken.

¶12 Attorney General Opinion No. 80-215, stated:

"Clearly, . . . the Open Meeting Act must be given a construction which will effectuate and not subvert the intention of the Legislature in facilitating an informed citizenry's right to participate in government. . ."

¶13 Statutes are to be construed with reason to accomplish the Legislature's purpose, as opposed to construing them in a manner to encourage the evil against which such statutes are directed. *Bell v. United Farm Agency*, Okl., 296 P.2d 149, 150 (1956).

¶14 Therefore, the provisions of the Open Meeting Act will be given a liberal construction with reference to the questions posed.

¶15 Your first question is answered in part by 25 O.S. 304, 1 (1977) which provides:

"As used in this act:

"1. 'Public body' means the governing bodies of all municipalities located within the State of Oklahoma, . . ."

¶6 All meetings of "public bodies," as defined in 25 O.S. 304, 1 are subject to the Open Meeting Act. 25 O.S. 303 (1977). Therefore, the city council of a charter municipality is subject to the provisions of the Open Meeting Act, since it is the governing body of the municipality. In the event of conflict between a city charter and the Open Meeting Act, the Open Meeting Act would prevail. The Open Meeting Act establishes the minimum acceptable standards of "openness" for meetings of public bodies in Oklahoma. As stated in Attorney General Opinion No. 80-218, a city charter may require a higher degree of "openness" than the state law, but it may not require less. The provisions of the Open Meeting Act calling for the conduct of public business in open meetings, conveniently accessible to the public, after adequate and informative notice, establish a policy of statewide concern sufficient to override any conflict with a city charter. City charter provisions must yield to conflicting laws of general concern wherein the state has a sovereign interest. *Baughman v. Weicker*, 136 Okl. 33, 276 P. 208 (1929).

¶7 Your second question asks whether matters pertaining to the proposed termination of the city manager fall within the meaning of "business of a public body" as stated in 25 O.S. 304, 3 (1977). That statute provides:

"As used in this Act:

* * *

"3. 'Regularly scheduled meeting' means a meeting at which the regular business of the public body is conducted."

¶8 Unless a contrary intent appears, words used in a statute are given their ordinary meanings. *Applications of Oklahoma Turnpike Authority*, Okl., 277 P.2d 176 (1954). "Business," not having been defined in the Open Meeting Act, must be given a construction in consonance with the ordinary meaning of the term and in harmony with the purposes of the Open Meeting Act; and as stated, *supra*, a liberal interpretation must be indulged.

¶9 11 Okl. Op. A.G. 543, 545, Atty. Gen Opinion No. 79-331, observed:

"Though 'business' is not defined by the act, it should be assumed to include the entire decision making process including deliberation, decision or formal action.' See *Time Publishing Company v. Williams*, 222 So.2d 470 (Fla. 1969)."

¶10 25 O.S. 302 (1977) states the policy of the Open Meeting Act:

". . . to encourage and facilitate an informed citizenry's understanding of the governmental processes and government problems."

See *Oklahoma Association of Municipal Attorneys v. Derryberry*, *supra*.

¶11 A city manager is the chief administrative officer of municipal government in cities having a city manager form of government. Certainly, deliberation, decision- or formal action by a city concerning the termination of a city manager would be among the types of "governmental process[es] and governmental problem[s]" the Legislature intended to subject to public scrutiny in the Open Meeting Act. A matter concerning the termination of a city manager would therefore be "business" within the meaning of 25 O.S. 304(3). That is not to say, however, that such a proposal could only be taken up at a "regularly scheduled meeting," as that term is used in 25 O.S. 304(3). A proposal to terminate a city manager would be "business" for the purpose of a regularly scheduled meeting; a "special meeting" [25 O.S. 304(4)]; perhaps an "emergency meeting" [25 O.S. 304(5)], under the proper statutory conditions; or a "continued or reconvened meeting" [25 O.S. 304(6)].

¶12 Your third question deals with whether the city council may dismiss or demand the resignation of the city manager by a vote taken outside a public meeting or executive session and without notice to the public. As stated above, all "business" conducted by a public body is subject to the Open Meeting Act. 11 Okl. OP. A.G. No. 79-331, 543, 545.

¶13 Certain personnel matters may be discussed in an executive session, pursuant to 25 O.S 307 (1977):

"Executive sessions of public bodies will be permitted only for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;. . . Provided, however, that any vote or action thereon must be taken in public meeting with the vote of each member publicly cast and recorded."

¶14 The Legislature intended that personnel matters were to be subject to the Open Meeting Act or there would have been no reason to provide for executive sessions to discuss personnel matters. As stated in *Berry v. Bd. of Governors of Reg. Dentists*, Okl., 611 P.2d 628, 631 (1980):

". . . The Act requires that: minutes of meetings of public bodies be kept; the members present and absent benoted; *all matters considered and actions taken be reflected, and that the vote of each member be publicly cast and recorded....*" (Emphasis added).

¶15 Therefore, a vote taken outside a public meeting or inside an executive session, concerning a decision to dismiss or demand the resignation of a city manager would violate the Open Meeting Act.

¶16 Your fourth question inquires whether a single member of a city council may lawfully meet privately with each of the other council members separately, obtain the signatures of a majority of the council on a document and use that document to take an action otherwise required to be considered and voted upon at an open meeting. Title 25, O.S. 306 (1977) provides:

"No informal gatherings or electronic or telephonic communications among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter."

¶17 The legislative intent is unmistakable. 25 O.S. 306 is an absolute prohibition upon any attempt to circumvent the Open Meeting Act and obtain a consensus upon an item of business by informal meetings outside a public meeting. In the language of *Berry v. Board of Registered Dentists*, supra:

"Informal gatherings among a majority of the members to decide on any course of action is prohibited by the Act."

¶18 Permitting a single member of the governing body to obtain a consensus or vote of that body by privately meeting alone with each member, would be to condone decision making by public bodies in secret, which is the very evil against which the Open Meeting Act is directed. The Open Meeting Act's prohibition against this type of decision making is not dependent upon whether a majority of the members of a governing body gather together at the same place at the same time in the presence of each other. *City of Miami Beach v. Berns*, Fla., 245 So.2d 38 (1971), relying on *Bd. of Public Instruction v. Doran*, 224 So.2d 693 (1969), construed the Florida Sunshine Law to hold:

"A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public. When at such meetings officials . . . transact public business at a future time in a certain manner they violate the government in the sunshine law, regardless of whether the meeting is formal or informal."

See also *Bigelow v. Howze*, Fla., 291 So.2d 645 (1974), which held:

". . . the philosophy of the cases which have construed the Sunshine Law clearly indicates that the decision making process of a public body composed of more than one member of that body must be held in public, even though such members constitute less than a quorum of the public body."

¶19 Your final question inquires whether a provision in a city charter providing that the city council may appoint, suspend or remove the city manager "at any time" allows the council to so act without an open meeting. A public body, i.e. a city council, cannot transact business outside a public meeting, and all meetings of public bodies are subject to the Open Meeting Act. As explained in the answer to your first question, city charter provisions in conflict with the Open Meeting Act must yield. No city charter provision can relieve a city council of compliance with the Open Meeting Act in reaching a decision to terminate the city manager or ask for his/her resignation.

¶20 It is, therefore, the official opinion of the Attorney General that:

1. The city council of a charter city is subject to the Open Meeting Act, 25 O.S. 301 et seq. (1977).
2. Matters pertaining to the proposed termination of a city manager fall within the meaning of "business of a public body," as that term is used in 25 O.S. 304(3) (1977) and in the remainder of the Open Meeting Act.
3. The city council of a charter city may not dismiss or demand the resignation of the city manager by a vote taken outside a public meeting or within an executive session and without notice to the public.
4. A single member of the city council of a charter city may not lawfully meet privately with each of the other council members separately to obtain signatures of a majority of the council upon a document and use that document to take an action otherwise required to be considered and voted upon at an open meeting.
5. A provision in a city charter providing that the city council may appoint, suspend or remove the city manager "at any time" does not permit the city council to so act in conflict with the Open Meeting Act.

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Title 25. Definitions and General Provisions		
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<u>25 O.S. 302,</u>	<u>Public Policy</u>	Cited
<u>25 O.S. 303,</u>	<u>Times and Places - Advance Notice</u>	Cited
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