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[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Question Submitted by: The Honorable Brian Renegar, DVM, State Representative, District 17

2007 OK AG 32

Decided: 10/11/2007

Oklahoma Attorney General Opinions

Cite as: 2007 OK AG 32, __ __

¶0 This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Under the Oklahoma Open Meeting Act, 25 O.S. 2001 & Supp.2006, §§ 301 - 314, may a public body convene in executive session to discuss the sale of real property?

¶1 Section 307 of Oklahoma's Open Meeting Act ("Act") lists the purposes for which public bodies may hold executive sessions. These limited purposes are exceptions to the general requirement that all meetings of public bodies must be open to the public. The exception relevant to your question reads as follows:

A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

.....

3. Discussing the ***purchase or appraisal*** of real property[.]

¶2 *Id.* (emphasis added).

¶3 "The cardinal rule for construction of a statute is to ascertain the intention of the Legislature by consideration of the statutory language." *Udall v. Udall*, 613 P.2d 742, 745 (Okla. 1980). In Section 307(B)(3) of the Act, the Legislature listed only two topics a public body may discuss concerning real property in an executive session: purchase and appraisal. Discussion related to disposing of real property by any means, including sale, is not mentioned as a basis for an executive session.^{1,2} This office cannot read into the Act what the Legislature has chosen to omit. "Exceptions should not be read into a statute which are not made by the legislative body." *Id.*

¶4 Having decided that a public body may discuss only the purchase or appraisal of real property in an executive session does not end our analysis. Section 307(B)(3) does not specifically state that the "purchase" of real property must be **by** the public body as opposed to being **from** the public body. That is, may the statute be interpreted to apply to instances in which a public body wishes to discuss in executive session the purchase of its real property by someone else?

¶5 This interpretation was rejected by Kansas's Attorney General in a 1987 opinion. See Kan. Op. Att'y Gen. 87-91, 1987 WL 290488. Kansas's Open Meeting Act has an executive session provision similar to Oklahoma's regarding the "acquisition" (as opposed to Oklahoma's "purchase") of real property. Kan. Stat. Ann. § 75-4319(b)(6) (2006).³ In rejecting the foregoing interpretation the Kansas Attorney General applied the following reasoning:

Many states have adopted similar provisions to protect against adverse effects of publicity when public knowledge of a governmental land purchase would increase prices to the taxpayer's detriment.⁴ This reduces the scope of the [open meeting law's] exceptions to those situations in which the government is the purchaser.⁵ This interpretation also is consistent with the legislature's choice of the word "acquisition" rather than "sale" or other term suggesting the applicability of the exception when the governmental body is the seller.

Bradley J. Smoot & Louis M. Clothier, *Open Meetings Profile: The Prosecutor's View*, 20 Washburn L.J. 241, 278 (1981) (footnote expanded) (footnote added). The opinion concluded that had the legislature intended to authorize public bodies to discuss selling real property in executive session, it would have so provided. Kan. Op. Att'y Gen. 87-91, 1987 WL 290488, at *2. Therefore, the acquisition of real property must be **by** the public body, not **from** the public body, before the exception applied. *Id.*

¶6 We believe that had the Legislature intended to allow public bodies to meet in executive session to discuss the sale of their real property, it would have, and easily could have, expressly said so. We conclude that when a public body wishes to discuss the sale of real property it owns, it must do so in an open meeting because no exception exists in the Act authorizing an executive session for that purpose.

¶7 It is, therefore, the official Opinion of the Attorney General that:

Under the Oklahoma Open Meeting Act ("Act"), 25 O.S. Supp.2006, § 307(B)(3), a public body may meet in executive session to discuss the purchase or appraisal of real property, but the Act contains no authority allowing a public body to meet in executive session to discuss the sale of real property.

W.A. DREW EDMONDSON
Attorney General of Oklahoma

DEBRA SCHWARTZ
Assistant Attorney General

FOOTNOTES

¹ The Legislature did create an exception in Section 307(C)(10) of the Act to allow certain public bodies to meet in executive session regarding "the transfer of property" when discussing "matters pertaining to economic development." Whether any particular transfer of real property qualifies for an executive session under this provision is a question of fact that cannot be answered in an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5).

² We note that the Legislature has expressly provided for openness to the public in many of the procedures required for a public body to dispose of state-owned property. See 74 O.S. Supp.2006, § 129.4.

³ Section 75-4319 was amended in 2007, but the amendment did not alter the language authorizing executive sessions for discussions concerning the "acquisition of real property." 2007 Kan. Sess. Laws ch. 177, § 6.

⁴ Many sunshine laws provide for secrecy when the meeting of the public entity involves land acquisition. The rationale behind this exemption is that disclosure of intention to buy results in inflated land prices. In effect, discussion in an open meeting would be to the disadvantage of the public since the taxpayers' money buys the land.

Nancy E. Shurtz, *The University in the Sunshine: Application of the Open Meeting Laws to the University Setting*, 5 J.L. & Educ. 453, 458 (1976).

⁵ Arguably, there are equally compelling public policy reasons for executive sessions when a public body is the seller, rather than the purchaser, of real property. "It is very likely that publicly discussing real estate owned for a number of years and [revealing] discussions as to the highest and best use of that real estate and of its perceived value, would affect the value of the property by limiting the amount offered by potential buyers . . ." Ky. Op. Att'y Gen. 05-OMD-032, 2005 WL 3844372, at *4 (internal quotation marks omitted). Unlike Oklahoma and Kansas, Kentucky's Open Meeting Act authorizes executive sessions for "[d]eliberations on the future acquisition **or sale** of real property . . . but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency." *Id.* at *1 (emphasis added) (quoting Ky. Rev. Stat. Ann. § 61.810(1)(b) (West 2006)).

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Cite Name

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Oklahoma Supreme Court Cases

Cite	Name	Level
<u>1980 OK 99, 613 P.2d 742,</u>	<u>Udall v. Udall</u>	Cited

Title 25. Definitions and General Provisions

Cite	Name	Level
<u>25 O.S. 301,</u>	<u>Short Title</u>	Cited
<u>25 O.S. 307,</u>	<u>Executive Sessions</u>	Cited

Title 74. State Government

Cite	Name	Level
<u>74 O.S. 18b,</u>	<u>Duties of Attorney General - Counsel of Corporation Commission as Representative on Appeal From Commission</u>	Cited
<u>74 O.S. 129.4,</u>	<u>Renumbered as 61 O.S. § 327 by Laws 2013, HB 1910, c. 209, § 39, emerg. eff. July 1, 2013</u>	Cited

