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## Question Submitted by: The Honorable Frank Pitezel, Oklahoma House of Representatives

1984 OK AG 53

Decided: 06/12/1984

Oklahoma Attorney General

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Cite as: 1984 OK AG 53, \_\_ \_\_

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¶0 The Attorney General has received your request for an official opinion, asking:

**"If a subordinate entity of a parent entity that comes within the open meeting law reviews and eliminates bids for contracts from consideration by the parent entity, is the subordinate entity exercising actual or de facto decision-making authority and therefore subject to the open meeting law?"**

¶1 In your opinion request you indicated that the subordinate entity "eliminated" bids on contracts for consideration by the parent entity. The subordinate entity is acting affirmatively when it eliminates bids from consideration by the parent entity. "Elimination" is defined as rejection (*Black's Law Dictionary*, rev. 4th ed., p. 612, 1968), or as casting out or getting rid of (*Webster's New Collegiate Dictionary*, p. 369, 1974). Elimination of a bid by the subordinate entity is an action by that entity in which it reviews the bid submitted and rejects or removes it from any possible consideration by the parent entity.

¶2 In *Sanders v. Benton*, 579 P.2d 815 (Okl.1978), the Oklahoma Supreme Court considered the applicability of the Open Meeting Act, 25 O.S. 301 et seq. (1981), to a subordinate entity of a public body. In the *Sanders* case, the Board of Corrections (Board) and the Department of Corrections (DOC) had created a subordinate entity, a Citizen's Advisory Committee, to provide information and to assist the DOC in making recommendations to the Board concerning proposed locations for a Community Treatment Center. This Advisory Committee conducted an investigation of the proposed locations and submitted its evaluations and recommendations for use by the Board. The Court wrote:

"Where a parent-entity, coming within the purview of 25 O.S. 201 [open meeting law] as a matter of law, establishes a subordinate entity and such subordinate entity's authority is derived solely through its parent-entity, the question of whether the subordinate entity may also come within the purview of 25 O.S. 201 [open meeting law] depends upon the purpose for which it was established and the responsibilities it exercises. If the subordinate entity in the performance of its assigned duties and responsibilities exercises actual or de facto decision-making authority, it must comply with the open meetings law." *Id.*, 579 P.2d at 820.

¶3 The Court held that because the subordinate entity was merely providing information and making recommendations, it was not exercising actual or de facto decision making authority and was not subject to the open meeting law.

¶4 This ruling was echoed in a companion case of *Carl v. Board of Regents of University of Oklahoma*, 577 P.2d 912 (Okl.1978) and reaffirmed in the later case of *Intern. Ass'n. of Firefighters v. Thorpe*, 632 P.2d 408 (Okl. 1981).

¶5 Applying the test established in *Sanders*, when a subordinate entity reviews and eliminates bids on contracts from consideration by the parent entity, it is exercising actual or de facto decision-making authority. Such an action would subject the actions of the subordinate entity to the Open Meeting Law.

¶6 It is, therefore, the official opinion of the Attorney General that when a subordinate entity reviews *and* eliminates bids for contracts from consideration by a parent entity then the subordinate entity is exercising actual or de facto decision making authority and is subject to the Open Meeting Law.

MICHAEL C. TURPEN  
 ATTORNEY GENERAL OF OKLAHOMA  
 RICHARD MILDREN  
 ASSISTANT ATTORNEY GENERAL

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**Cite Name Level**

None Found.

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**Cite Name Level**

**Title 25. Definitions and General Provisions**

Cite	Name	Level
<u>25 O.S. 201,</u>	<u>Repealed</u>	Discussed
<u>25 O.S. 301,</u>	<u>Short Title</u>	Cited

