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Question Submitted by: The Honorable George Nigh, Governor of the State of Oklahoma

1981 OK AG 311

Decided: 12/29/1981

Oklahoma Attorney General

Cite as: 1981 OK AG 311, __ __

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

Are meetings of the governing body and committees of the Council of State Governments, when meeting in Oklahoma, subject to the provisions of the Open Meeting Act?"

¶1 Title 74 O.S. 427 (1971), provides that carrying forward Oklahoma's participation as a member of the Council of State Governments shall be a function of the Oklahoma Commission on Interstate Cooperation. The latter Commission is established by 74 O.S. 425 (1971) and consists of the membership of two statutory committees: the Committee on Interstate Cooperation and the Governor's Committee on Interstate Cooperation. The membership of the latter two committees is set forth at 74 O.S. 423 (1974) and 74 O.S. 424 (1979), respectively. The membership of these committees consists of numerous state legislators and executive branch officers.

¶2 Title 74 O.S. 429 (1971), provides:

"The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which cooperate through it."

¶3 Title 25 O.S. 304 (1977) defines "public bodies" subject to the Open Meeting Act:

"As used in this act:

"1. 'Public body' means the governing bodies of all municipalities located within the State of Oklahoma, boards of county commissioners of the counties of the State of Oklahoma, boards of public and higher education in the State of Oklahoma and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups in the State of Oklahoma supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not mean the state judiciary or the State Legislature or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education, when said staffs are not meeting with the public body."

¶4 If the State of Oklahoma pays dues or provides any other form of financial support of the Council of State Government from public funds, clearly, the Council is a public body subject to the Open Meeting Act. This, however, is a fact question.

¶5 A recent decision by the Oklahoma Supreme Court has given very broad and expansive application to the Oklahoma Open Meeting Act, 25 O.S. 301 (1977), et seq.: *International Association of Firefighters Local No. 2479 v. Thorpe*, ___ P.2d ___ 52 O.B.A.J. 1884 (July 28, 1981). The issue in this case was whether collective bargaining negotiations between the city manager of a city and a firefighters' bargaining agent were subject to the Open Meeting Act. The Court found that under the facts present therein, the Open Meeting Act did not apply. However, the holding was qualified, the Court saying:

". . . if the city manager has authority to bind the city commission on any issue, that portion of the contract negotiations must also be open to the public."

¶6 The Court addressed the contention that the city manager was not a "public body" for Open Meeting Act purposes:

"Whether the individuals who composed the group were private citizens of public officials or employees has not been a distinguishing feature in previous cases. *The key consideration should be the public nature of the work of the group.*

* * *

"The usual meaning of the words 'committees', 'task forces' and 'study groups' [as used in 25 O.S. 304 (1977)] denotes a group of individuals, working together on a specific project or general goal. We hold that the City Manager and the Bargaining Agent negotiating together are clearly included as a committee, task force or study group. Although this may not be what is traditionally thought of as a committee, task force or study group, clearly the function of the meeting between the City Manager and the Bargaining Agent is the same as that of meetings of more traditional committees, task forces or study groups.

"The Open Meeting Law, because it is enacted for the public's benefit, is to be construed liberally in favor of the public."

¶7 The Court continued to extend to the current Open Meeting Act the same interpretation placed upon its predecessor (25 O.S. 1971, 201) by *Sanders v. Benton*, Okl., 579 P.2d 815 (1978). The rule of *Sanders v. Benton* is quoted at ___ P.2d ___, 52 O.B.A.J. 1885, as follows:

"Where a parent entity, coming within the purview of 201 as a matter of law, establishes a subordinate entity and such subordinate entity and 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 201 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 meeting law.... In the absence of any exercise of actual or de facto decision-making authority by the subordinate entity, as for example in the performance of purely administrative or ministerial tasks, the provisions of 201 are not called into play."

¶8 It is, therefore, apparent that if the Council of State Governments possesses actual or de facto decision-making authority to bind the State of Oklahoma upon any matter of public interest, it must comply with the Open Meeting Act when meeting in Oklahoma. Whether such decision-making authority exists or not is a question of fact. As stated by the Court in the

firefighters case, "the key consideration is the public nature of the work of the group." Its composition is immaterial. If the work of the Council of State Governments is "public in nature," and if it possesses the requisite degree of decision-making authority to bind the State of Oklahoma, it is subject to the Open Meeting Act.

¶9 It is, therefore, the official opinion of the Attorney General that whether a meeting of the Council of State Governments in Oklahoma is subject to the Open Meeting Act, 25 O.S. 301 (1977), et seq., is a question of fact, dependent upon whether the council is supported in whole or in part by public funds, or whether the Council possesses actual or de facto decision-making authority to bind the State of Oklahoma upon any matter of public business. If either condition is met, meetings in Oklahoma of the Council of State Governments are subject to the Open Meeting Act.

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA
FLOYD W. TAYLOR
FIRST ASSISTANT ATTORNEY GENERAL

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| Title 25. Definitions and General Provisions | | |
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