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Question Submitted by: The Honorable Maxine Kincheloe, Oklahoma House of Representatives

1981 OK AG 141

Decided: 06/11/1981

Oklahoma Attorney General

Cite as: 1981 OK AG 141, __ __

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

"May a school board appoint a new school board member during a regularly scheduled meeting if that item is not on the published agenda?"

¶1 Meetings of boards of education must conform to the Open Meeting Act, 25 O.S. 301 et seq. (1977). A school board is a "public body" within the meaning of the Open Meeting Act. *Id.*, at 304.

¶2 25 O.S. 311 of the Act requires the posting of an agenda at least twenty-four (24) hours prior to regularly scheduled meetings of public bodies. Subsections 9, 10 and 11 provide:

"9. In addition to the advance public notice in writing required to be filed for regularly scheduled meetings, all public bodies shall, at least twenty-four (24) hours prior to such meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting, such twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma; provided, however, *the posting of an agenda shall not preclude a public body from considering at its regularly scheduled meeting any new business*. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. *'New business,' as used herein shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of posting.*

"10. In the event any meeting is to be continued or reconvened, public notice of such action, including date, time and place of the continued meeting, shall be given by announcement at the original meeting. *Only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting.*

"11. Special meetings of public bodies shall not be held without public notice being given at least forty-eight (48) hours prior to said meetings. Such public notice of date, time and place shall be given in writing, in person or by telephonic means to the Secretary of State or to the county clerk or to the municipal clerk by public bodies in the manner set forth in paragraphs 2, 3, 4, 5 and 6 of this section. In addition, all public bodies shall, at least twenty-four (24) hours prior to such special meetings, display public notice of said meeting setting forth thereon the date, time, place and agenda for said meeting. *Only matters appearing on the posted agenda may be considered at said special meeting.* Such public notice shall be posted in prominent public view at the

principal office of the public body or at the location of said meeting if no office exists. Twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma." (Emphasis Supplied)

¶3 Subsections 10 and 11, dealing with continued or reconvened, and special meetings, contain the language, "Only matters appearing on the posted agenda may be considered at said . . . meeting." Such precise prohibitory language does not appear in Subsection 9, dealing with regularly scheduled meetings. However, Subsection 9 contains a proviso permitting a public body to take up "new business," as therein defined, at regularly scheduled meetings. "New business" may not be taken up at continued or reconvened meetings or special meetings, said meetings being limited to matters appearing on the posted agenda. Matters *not* appearing on the agenda for a regularly scheduled meeting may be taken up only if they qualify as "new business."

¶4 "New business" is defined in Subsection 9, as "any matter not known about or which could not have been reasonably foreseen prior to the time of posting." It is therefore apparent that in the absence of an appropriate entry on the agenda for a regularly scheduled meeting, a school board may not appoint a new member unless such appointment constitutes a matter which was "not known about or which could not have been reasonably foreseen prior to the time of posting" the agenda. Such conclusion is drawn from the plain meaning of the language used in the Open Meeting Act. See *City of Duncan, etc. v. Barnes*, Okl., 293 P.2d 590 (1956). Whether any given item falls within the definition of "new business" for purposes of the Open Meeting Act is a question of fact and cannot be answered as a matter of law.

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

- 1. Under the Open Meeting Act, 25 O.S. 301 et seq. (1977), a school board may not appoint a new member during a regularly scheduled meeting in the absence of an appropriate entry on the agenda posted for the meeting, unless the appointment of such new member falls within the definition of "new business", set forth in 25 O.S. 311(9) (1977); and**
- 2. "New business" is defined by 25 O.S. 311(9) (1977) as "any matter not known about or which could not have been reasonably foreseen prior to the time of posting" the agenda for a regularly scheduled meeting; and**
- 3. Whether the appointment of a new member by a school board during a regularly scheduled meeting falls within the definition of "new business" for purposes of the Open Meeting Act is a question of fact, which cannot be answered as a matter of law.**

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

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name**Level****Oklahoma Supreme Court Cases**

Cite	Name	Level
<u>1956 OK 39, 293 P.2d 590,</u>	<u>CITY OF DUNCAN v. BARNES</u>	Cited

Title 25. Definitions and General Provisions

Cite	Name	Level
<u>25 O.S. 301,</u>	<u>Short Title</u>	Discussed
<u>25 O.S. 311,</u>	<u>Public Bodies - Notice</u>	Discussed at Length