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Question Submitted by: The Honorable Paul Taliaferro, Oklahoma State Senate

1981 OK AG 109

Decided: 04/16/1981

Oklahoma Attorney General

Cite as: 1981 OK AG 109, __ __

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

1. Is a public trust organized under 60 O.S. 176 et seq. (1980) a "public body" within the meaning of the Open Meeting Act, 25 O.S. 301 et seq. (1977)? |
2. Is such a public trust subject to the Open Meeting Act?
3. If such public trusts are subject to the Open Meeting Act, under what conditions may cameras and tape recorders, as tools of the news media, be barred from the meetings of the trustees of such public trusts?
4. Do the answers to the foregoing questions apply uniformly to all "public bodies" covered by the Open Meeting Act?

¶1 Your first and second questions are answered by a plain reading of the Open Meeting Act. 25 O.S. 304(1) (1977) defined the term "public body" as follows:

"1. 'Public body' means the governing bodies of *all* . . . public trusts...." (Emphasis added)

¶2 25 O.S. 303 provides:

"All meetings of public bodies, as defined hereinafter, shall be held at specified times and places which are convenient to the public and shall be open to the public, except as hereinafter provided.* * *"

¶3 The intent of the Legislature to include the meetings of trustees of public trusts within the Open Meeting Act could not be more clear.

¶4 The governing bodies of public trusts organized under 60 O.S. 178.8 (1980), are "public bodies" within the meaning of the Open Meeting Act, and said bodies are subject to the Open Meeting Act in every respect.

¶5 Your third question asks under what conditions news media cameras and tape recorders may lawfully be barred from the meetings of trustees of public trusts. The Open Meeting Act contains no express provisions dealing with news media tools, such as cameras and tape recorders. Therefore, the question resolves itself into one of statutory construction to attempt to arrive at the legislative intent embodied in the Open Meeting Act with respect to news media access to public meetings. All rules of statutory construction are subservient to the one that the legislative intent must prevail, if it reasonably can be discovered in the language of the statute. *Cherokee County Publishing Co. v. Cherokee County*, 48 Okl. 722, 151 P. 187 (1915). *Sutherland Statutory Construction*, 4th Ed., Vol. 2A, 56.01, p. 403, states:

"* * * It is not uncommon, moreover, for a statute to contain a policy section outlining, usually in general terms, what policy the legislation is supposed to serve. Provisions of this sort have often been helpful in resolving doubtful statutory meaning."

¶6 In this connection, the Open Meeting Act contains a "policy section." 25 O.S. 302 provides:

"It is the public policy of the State of Oklahoma to encourage and facilitate an *informed* citizenry's understanding of the governmental process and governmental problems." (Emphasis added)

¶7 In *Open Meetings: Exceptions to State Laws*, Nat. Ass'n. of Attorneys General, Mar. 1979, p. 2, the following appears:

"Another reason for the public policy of openness is that corruption, conflict of interest and the influence of special interests are frustrated by public scrutiny. Public officials are more responsive to the public when the considerations upon which official action is based are publicly known. . . . Public understanding of the competing considerations facing the governmental body on any issue may facilitate public acceptance of often difficult and unpopular but necessary decisions. *Openness also facilitates better reporting by the press of the governmental process, which, after all, is the means by which the vast majority of citizens follow the machinations of government.*" (Emphasis added)

¶8 There is indeed a relationship between effective media coverage of public meetings and the public policy embodied in 25 O.S. 302 of the Open Meeting Act to encourage and facilitate an informed citizenry's understanding of governmental processes and governmental problems. As stated in the above publication by the National Association of Attorneys General, reporting by the press is the means by which the vast majority of citizens follow and are informed upon the actions of their government. *Channel 10, Inc. v. Independent School District No. 709*, Minn., 215 N.W.2d 814, 821 (1974), in finding that members of the news media had standing to sue under the Minnesota Open Meeting Law, held:

". . . we think that the basic purpose of the law was to have an informed public. The only realistic and practical means of accomplishing that end is to have open meetings with notice thereof to the news media. The law was not passed for the direct benefit of the media but rather for that of the public. Similarly, the United States Supreme Court has stated with reference to the constitutional guarantees of speech and the press:

"Those guarantees are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society.' *Time, Inc. v. Hill*, 385 U.S. 374, 389, 87 S.Ct. 534, 543, 17 L.Ed.2d 456, 468 (1967)."

¶9 Before the enactment of the Open Meeting Act in 1977, public access to meetings of governmental bodies was governed by 25 O.S. 201 (1971), which was repealed when the 1977 act was adopted. 25 O.S. 201 was similar to the current Open Meeting Act in a number of respects, but certainly both laws have had similar objectives and purposes. In *Sanders v. Benton*, Okl., 579 P.2d 815 (1978), the policy behind 201 was described as intending to open for public scrutiny the meetings of public bodies. That same policy was recognized in another case interpreting 201, *Carl v. Board of Regents of Univ. of Oklahoma*, Okl., 477 P.2d 912 (1978). The 1977 Open Meeting Act went into greater detail than 25 O.S. 201 in many respects, but especially important is the legislative statement of policy contained in 25 O.S. 302, supra, which embraced the concept of:

". . . an *informed* citizenry's understanding of the governmental process and governmental problems." (Emphasis added)

¶10 Certainly, while broad access of individual citizens to public meetings was within the contemplation of the Legislature, the use of the language, "informed citizenry", was a recognition of the citizenry's need for information about its government; and, realistically speaking, that need is one which is practically served only by assuring adequate media access to public meetings. That view was adopted in Attorney General Opinion No. 65-113, which interpreted 201, which, as we have shown, did not go nearly as far as the present Open Meeting Act in expressing itself upon the importance of keeping the public informed about the activities of its governing officials. There, the Attorney General said:

". . . The meetings of the Alcoholic Beverage Control Board must be open to the public, and to the press and television cameramen as members of the public."

¶11 The 1965 Opinion focused upon the rights of television cameramen and members of the press as members of the public and did not deal with the policy purpose of keeping the public informed, which is a policy strongly stated in the current Open Meeting Act. If, for 25 O.S. 201 purposes, television cameramen and members of the press were entitled to attend public meetings, under the new Open Meeting Act, there is no reason to diminish the rights of such persons under the present Open Meeting Act.

¶12 It follows that barring members of the press from using their professional tools, tape recorders and cameras, in public meetings would frustrate the underlying purposes and objectives of the Open Meeting Act. The ability to tape-record and video tape, film or photograph the proceedings of public bodies greatly enhances the accurate reporting of events transpiring at such meetings; and public interest in those events will be stimulated by news accounts using the products of those instruments. Kindling public interest in the affairs of government and assuring that information received by the public about its government is accurate are considerations very much in keeping with the policy of the Open Meeting Act.

¶13 While members of the press cannot lawfully be prevented from using tape-recorders and cameras while covering the meetings of trustees of public trusts, nevertheless, as was pointed out in the 1965 Attorney General opinion discussed supra, all public bodies have the inherent power to maintain decorum and order in their meetings. No hard and fast rule can be prescribed as to when an individual's conduct in a public meeting disrupts the meeting to the point that it interferes with the ability of the public body to carry out its business.¹ However, a blanket ban on cameras and tape-recorders is impermissible. Members of the news media must be afforded a reasonable opportunity to use their tools to cover public meetings, and that right, like any other legal right, should not be exercised abusively to the detriment of equally important public interests. Certainly, modern attitudes toward the once assumed disruptive presence of cameras in public meetings has softened, as evidenced by the now widely accepted judicial view that cameras may be used in courtrooms to enhance the public's accessibility to information about judicial proceedings.

¶14 Your final question asks whether the Attorney General's findings with respect to public trusts would apply to all public bodies covered by the Open Meeting Act. The analysis in this Opinion has focused upon public trusts as "public bodies" within the definition of that term in 25 O.S. 304(1). All "public bodies" defined in 25 O.S. 304(1) are treated alike under the Open Meeting Act. A public trust organized under 60 O.S. 176 (1980) is no different than any other public body for Open Meeting Act purposes.

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

1. Public trusts organized under 60 O.S. 176 et seq. (1980) are "public bodies" within the meaning of the Open Meeting Act, 25 O.S. 301 et seq. (1977).

2. Such public trusts must comply with and are subject to the Open Meeting Act.
3. Cameras and tape recorders may not be barred from the meetings of trustees of such public trusts.
4. The above findings apply equally to any and all public bodies subject to the Open Meeting Act.

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FOOTNOTE:

¹ Note: Rules of Okla. Cty. District Court *re*: Media access to court proceedings with "tools of trade", e.g. cameras, etc.

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>1978 OK 53, 579 P.2d 815,</u>	<u>SANDERS v. BENTON</u>	Cited

Title 25. Definitions and General Provisions

Cite	Name	Level
<u>25 O.S. 201,</u>	<u>Repealed</u>	Discussed at Length
<u>25 O.S. 301,</u>	<u>Short Title</u>	Discussed
<u>25 O.S. 302,</u>	<u>Public Policy</u>	Discussed at Length
<u>25 O.S. 303,</u>	<u>Times and Places - Advance Notice</u>	Cited
<u>25 O.S. 304,</u>	<u>Definitions</u>	Discussed at Length

Title 60. Property

Cite	Name	Level
<u>60 O.S. 176,</u>	<u>Trusts for Benefit of State, County or Municipality - Approval - Expenditures - Bylaws - Amendments - Indebtedness - Bonds - Contracts.</u>	Discussed at Length
<u>60 O.S. 178.8,</u>	<u>Conflict of Interest - Transactions Exempt</u>	Cited

