



# OKLAHOMA

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### Question Submitted by: The Honorable Bobby Cleveland, Oklahoma State Representative, District 10

2017 OK AG 18

Decided: 12/27/2017

#### Oklahoma Attorney General Opinions

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Cite as: 2017 OK AG 18, \_\_ \_\_

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¶10 This office has received your letter requesting an official Attorney General Opinion in which you ask, in effect, the following question:

**Is the Oklahoma Sheriffs' Association, by acting as the Plan Administrator for the Oklahoma Temporary Motorist Liability Plan pursuant to 47 O.S.Supp.2017, § 7-626, subject to the Oklahoma Open Meeting Act or Open Records Act?**

#### I.

##### Background

¶11 The Oklahoma Temporary Motorist Liability Plan (the "Plan") was created in 2013 to provide minimum vehicle liability insurance coverage for individuals whose license plates have been seized for failure to maintain such coverage, as required by law. 47 O.S.Supp.2017, § 7-621. The Plan's coverage begins when a citation is issued and the license plate seized and ends no later than expiration of the citation, which is ten days after issuance. *Id.* § 7-622(A); *see also id.* § 7-606(A).<sup>1</sup> By statute, "[a] statewide association of county sheriffs in Oklahoma shall serve as the Plan Administrator." *Id.* § 7-626(A) Since the Plan's inception, the Oklahoma Sheriffs' Association ("OSA") has served in this role.

¶12 The duties of the Plan Administrator include paying the premiums collected by the sheriffs' offices to the insurance carrier maintaining a database of license plates seized by law enforcement, which is shared with the Oklahoma Tax Commission ("OTC"), and notifying OTC when a vehicle owner is in compliance with state insurance coverage laws. *See* 47 O.S.Supp.2017, §§ 7-606(A)(1)(b)(1), (2); 7-626(B). In addition, when a vehicle owner presents documentation of such compliance and retrieves the license plate, he or she must also pay an administrative fee of \$125, which is turned over to the Plan Administrator. *Id.* § 7-606(A)(1)(b)(2). The Plan Administrator then allocates the fee as follows: \$20 to the agency that stored the seized license plate, \$70 to the agency that issued the citation, and \$25 to the Temporary Insurance Premium Pool. *Id.* The remaining \$10 of each administrative fee is retained by the Plan Administrator. *Id.*

¶13 According to its website,<sup>2</sup> OSA is a non-profit association organized to "represent the elected Sheriffs in all 77 counties of Oklahoma" and "to maintain the office of the sheriff through training and education." Sheriffs and undersheriffs from across the state serve on OSA's seventeen-member board. OSA does not receive state appropriations. Rather, it is funded by

membership dues from private individuals and county sheriffs and by fees paid for its role in state programs, such as serving as the Plan Administrator. You ask whether, by acting as Plan Administrator for the Oklahoma Temporary Motorist Liability Plan, OSA is subject to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

## II.

### Discussion

**A. A private non-profit entity such as OSA is subject to the Oklahoma Open Meeting Act if the entity is "supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property."**

¶4 The Oklahoma Open Meeting Act generally requires "public bodies" to, among other things, hold meetings at specified times and places that are convenient to the public and are preceded by advance public notice, cast their votes publicly and have such votes recorded, and keep minutes of their proceedings. See 25 O.S.2011, §§ 303, 305, 312. The public policy underlying the Act is "to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems." *Id.* § 302. The Legislature recognized that in order to achieve this objective, citizens must have access to the meetings of public bodies. And "[b]ecause it was enacted for the public's benefit, the Open Meeting Act 'is to be construed liberally in favor of the public'" *Lafalier v. Lead-Impacted Communities Relocation Assistance Tr.*, 2010 OK 48, ¶ 37, 237 P.3d 181, 195 (quoting *Int'l Ass'n of Firefighters Local No. 2479 v. Thorpe*, 1981 OK 95, ¶ 17, 632 P.2d 408, 411).

¶5 To determine whether the Oklahoma Open Meeting Act applies to a private, non-profit entity such as OSA, we must ascertain the circumstances under which such an entity may be considered a "public body." As defined in Section 304(1) of the Act, a "public body" means:

the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, boards of public and higher education in this state and **all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees**, public trusts or any entity created by a public trust, including any committee or subcommittee composed of any of the members of a public trust or other legal entity receiving funds from the Rural Economic Action Plan Fund as authorized by Section 2007 of Title 62 of the Oklahoma Statutes, **task forces or study groups in this state 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.

25 O.S.2011, § 304(1) (emphasis added).

¶6 While terms like non-profit entity or trade association are not among those specifically listed in Section 304(1) as a "public body," the terms used in the Act are numerous and broad enough to cover such entities if the other definitional requirements are present. See, e.g., A.G. Opin. 1980-215 at 366 ("[T]he mere absence of the words 'nonprofit corporation' in the § 304(1) definition of 'public body' will not in and of itself prevent a 'nonprofit corporation' from being subject to the Open Meeting Act."). Indeed, "[t]he usual meaning of the words 'committees,' 'task forces' and 'study groups' denotes a group of individuals, working together on a specific project or general goal." *Int'l Ass'n of Firefighters*, 1981 OK 95, ¶ 6, 632 P.2d at 410. The composition of the group's membership--e.g., private citizens, public officials, or employees--is not the distinguishing factor in determining whether a group is a public body; instead the "key consideration should be the public nature of the work of the

group." *Id.* Accordingly, a private non-profit entity such as OSA would be a public body, and therefore subject to the Open Meeting Act, *if* it satisfies one of the following conditions: (i) supported in whole or in part by public funds, (ii) entrusted with the expending of public funds, or (iii) the administering of public property. See 25 O.S.2011, § 304(1).<sup>3</sup>

¶7 We turn first to whether OSA is "supported in whole or in part by public funds." Since "supported" is not defined by the Act, we look to the ordinary meaning of the word. See 25 O.S.2011, § 1 ("Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears[.]"). "Support" is defined as "to pay the costs of: maintain." Webster's Third New Int'l Dictionary 2297 (3d ed. 2002). While OSA does not receive State appropriations, it *does* receive a set portion of a statutorily-required fee collected under the Plan, a fee that is designed both to generate revenue for the Temporary Insurance Premium Pool and defray the costs to the various agencies of performing their duties under the Plan. See 47 O.S.Supp.2017, § 7-606(A)(1)(b)(2). Because OSA retains a portion of the administrative fee, presumably to cover some of its operational costs, this payment would constitute at least partial "support" under the plain meaning of the word. Being supported in part by public funds, OSA is a public body subject to the Open Meeting Act.<sup>4</sup> In honoring the public policy of the Act, "[t]hose who voluntarily choose to participate in a program which is primarily supported by tax dollars cannot reasonably expect the public which funds the program will be denied the right to scrutinize the basis on which the payments are made." *Tulsa Tribune Co. v. Fulton*, 1984 OK 46, ¶ 13, 696 P.2d 497, 501.

¶8 Based on the foregoing, OSA is a "public body" under Section 304(1),<sup>5</sup> and thus subject to the provisions of the Oklahoma Open Meeting Act. Consequently, OSA must comply with the Open Meeting Act when a majority of its members meet to conduct OSA business. See 25 O.S.2011, § 304(2).

**B. A private non-profit entity such as OSA is subject to the Oklahoma Open Records Act if the entity is "supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property."**

¶9 Subject to certain limitations and exceptions, the Oklahoma Open Records Act provides that "[a]ll records of *public bodies* and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours[.]" 51 O.S.Supp.2017, § 24A.5 (emphasis added). Thus, as with the Open Meeting Act, a private non-profit entity such as OSA is also subject to the Open Records Act if it is defined as a public body or a public official. This definition is similar to the one found in the Open Meeting Act: a "public body" includes one that is "supported in whole or in part by public funds." *Id.* § 24A.3(2).

¶10 As established above, since OSA is supported in part by public funds, it is also subject to the Open Records Act. However, it should be noted that only records "created by, received by, under the authority of, or coming into the custody, control or possession of [OSA] *in connection with the transaction of public business, the expenditure of public funds or the administering of public property*" are subject to the Open Records Act. 51 O.S.Supp.2017, § 24A.3(1) (emphasis added). Any records that do not meet the definition of a "record" pursuant to Section 24A.3(1) or are specifically exempted from disclosure by law are not required to be disclosed under the Act.<sup>6</sup>

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

**By acting as the Plan Administrator for the Oklahoma Temporary Motorist Liability Plan pursuant to 47 O.S.Supp.2017, § 7-626, the Oklahoma Sheriff's Association, a private non-profit organization, is "supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property." Accordingly, it meets the definition of "public body" and is therefore subject to both the Oklahoma Open Meeting Act and the Oklahoma Open Records Act. See 25 O.S.2011, § 304(1), 51 O.S.Supp.2017, § 24A.3(2).**

Mike Hunter  
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### FOOTNOTES

<sup>1</sup> Coverage may expire earlier if the vehicle owner obtains the minimum mandatory insurance or other documentation of an ability to cover liabilities arising from operating the vehicle. 47 O.S.Supp.2017, § 7-622(A).

<sup>2</sup> See <https://www.oklahomasheriffs.org/> (last visited December 27, 2017).

<sup>3</sup> While not relevant to this opinion, an alternate condition arises when an entity is a "subordinate entity" of a public body and is authorized to exercise actual or de facto decision-making authority on behalf of the public body. See *Sanders v. Benton*, 1978 OK 53, ¶ 16, 579 P.2d 815, 820.

<sup>4</sup> The situation at hand is distinguishable from one where a private entity **contracts** to provide goods or services on behalf of a governmental agency. Such an entity is not subject to the Open Meeting Act because it is not supported in whole or in part by public funds; rather, it is reimbursed for goods provided or services rendered pursuant to a contract and invoice. See A.G. Opin. 2002-37 at 223.

<sup>5</sup> While certain entities, including the judiciary and the Legislature, are specifically exempt from the Open Meeting Act, OSA is not among them. See 25 O.S.2011, § 304(1).

<sup>6</sup> You also ask whether OSA would be subject to the Oklahoma Open Meeting Act and/or Oklahoma Open Records Act if it receives dues paid by county sheriffs from county funds. Having already found that OSA is subject to those Acts as the Plan Administrator for the Oklahoma Temporary Motorist Liability Plan, we need not reach this question.

### **Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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<u>2020 OK AG 2</u> ,	<u>Question Submitted by: The Honorable Ron Sharp, Oklahoma State Senator</u> , Discussed
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<u>1978 OK 53, 579 P.2d 815,</u>	<u>SANDERS v. BENTON</u>	Discussed
<u>1981 OK 95, 632 P.2d 408,</u>	<u>International Ass'n of Firefighters, Local 2479 v. Thorpe</u>	Discussed at Length
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<u>47 O.S. 7-626,</u>	<u>Plan Administrator - Payment of Daily Cost of Coverage - Duties of Sheriffs and Tag Agents</u>	Discussed
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<u>51 O.S. 24A.5,</u>	<u>Open and Confidential Records</u>	Cited

