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"Absolutely nothing prevents them from saying verbatim what was discussed in executive session. If the attorney was trying to cow them into shutting up, that's wrong. It's not against the law. It's perfectly legal for them to talk about it if they want to. Elected officials don't take orders from the attorney."

— MIKE MERRIAM
Kansas Press Association's attorney

School board closes meeting for hypothetical purpose

By RACHEL COLEMAN

• Leader & Times

Prayer, they say, changes things.

Three days after the USD No. 480 school board voted unanimously to allow student-led prayer at extracurricular events, the group gathered to find out from legal counsel just what those changes might be.

The special meeting, conducted at 11 a.m. Thursday at the district's central office building on

401 N. Kansas Ave., was almost entirely an executive session, closed to the public.

“We visited all the legal ramifications that could potentially be brought by us supporting our student body for their ability to say a prayer,” said Tammy Sutherland-Abbott in an interview after the meeting. “We were made aware of potential problems.”

The board took no action, so for now, she added, “everything is going ahead as it was decided on Monday.”

Board president Delvin Kinser called the meeting at the suggestion of superintendent of schools Paul Larkin and Rick Yoxall, the attorney retained by the district.

“Our attorney said the information he had was best presented in executive session,” Kinser said, speaking later that day. “We have him as our lawyer — he is tasked with making sure we do things legally. It was his advice, something that’s his purview.”

The special meeting opened as USD 480 school board meetings usually do, with prayer. Board member Matt Friederich expressed a wish for divine guidance:

“Lord, take the emotion out of it, get the facts, and help us better understand what we can accomplish as a team and allow our students to be students,” he said. “I pray, as we echoed the other night, that we, as a board, unite, come together as a body, as an administration. We know that not all the answers will be what we want to hear, but what we need to hear ... no matter what the outcome.”

Since the agenda included only one item, which was to go into executive session, the public — including news media — was not permitted to remain in the conference room.

Board member Sutherland-Abbott questioned the need for private discussion.

“What are we going to discuss that’s privileged?” she asked.

“Potential litigation,” replied Yoxall.

“Potential? Even though we’re not even — there’s nothing out there at all?” said Sutherland-Abbott.

“Potential litigation, yes,” said Yoxall.

The vote to recess into executive session split the board, with Sutherland-Abbott, Steve Helm and Nick Hatcher voting against closed-door discussion, and Chris Jewell, Crystal Clemens, Friederich and Kinser in favor.

Yoxall later said that because the executive session addressed matters that are subject to attorney-client privilege, the topic could not be revealed.

“We can’t tell you,” he said.

However, according to the Kansas Press Association’s veteran legal expert, even if Yoxall is not able to talk, the board can.

“Of course they can. Absolutely nothing prevents them from saying verbatim what was discussed in executive session,” Mike Merriam said. “If the attorney was trying to cow them into shutting up, that’s wrong. It’s not against the law. It’s perfectly legal for them to talk about it if they want to.”

Potential litigation?

Friday, 27 September 2013 11:03

Elected officials, Merriam said, “don’t take orders from the attorney.”

All the board members interviewed said they did not receive instructions to keep quiet. Helm and Friederich confirmed this, though neither chose to comment on the executive session. Jewell and Hatcher could not be reached for comment.

Clemens, a long-time county employee who works in the election office, said her experience with the Kansas Open Meetings Act has taught her to be cautious about executive sessions.

“I’ve always been advised (at the county) that no details are to be discussed,” she said, noting that when it comes to transparency and discretion, “there is a fine line, and we have dealt with it for years.”

She felt Thursday’s executive session privilege was exercised in accordance with the law.

“The general sense was, ‘OK, you’ve advised us, now we’re done,’” she said. “At the next meeting, it should be an agenda item where this will be discussed in open meeting as far as a solution. There will be open dialogue.”

Sutherland-Abbott would have preferred public conversation all along. She’s concerned that fear of litigation could strip the board of its resolve.

“We need to stand by our convictions,” she said. “I’m not eager to have conflicts, to deal with the ACLU and other organizations, or a few people who are against prayer. But if that happens, so be it. We’ll deal with it then.”

Over the last 25 years, she pointed out, “we had four different principals at LHS, and we’ve had no issues, until our current principal changed things.”

Potential litigation?

Friday, 27 September 2013 11:03

Public prayer led by community members was discontinued because of the possibility of lawsuits, Sutherland-Abbott said.

“Even after that, for the next year or two, the kids were able to go up to the PA system and announce, ‘we’re going to gather on the football field,’” she said. “I don’t think that’s happened at all this year. So little by little, slowly, it went away.

“That’s exactly what’s happened to our country. Nobody stands up for anything. I have not raised my children to be fearful in life, and we should not be doing that in the district. I could walk out on the street today and be killed, but if I walked out every day thinking, ‘this might be the day I die,’ and I’m letting that dictate everything I do — that’s a horrible way to live. I want us to be fearless and brave and do what’s best for our students and our community.”

The next regular meeting of the USD 480 board is set for 6:30 p.m. Oct. 7 at the Education Service Center, 624 N. Grant Ave. It will be open to the public.

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