

8014 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMMASTER
ATTORNEY GENERAL

August 25, 2005

Grant W. Duffield, City Manager
City of Tega Cay
Post Office Box 3399
Tega Cay, South Carolina 29708

Dear Mr. Duffield:

In a letter to this office you questioned whether an ordinance setting forth the procedures for a telephonic meeting may be enacted. As referenced by you,

1. The City council may hold a duly called council meeting when a council member(s) attends such meeting by telephone conference call, provided that all of the following conditions are met:
 - a. A quorum of the council members are physically present at the meeting place, and remain physically present throughout the meeting; and
 - b. The member(s) attending by teleconference can hear any and all comments made by the public, staff, and other council members (whether attending in person or telephonically), at such meeting.
 - c. Each of the members of public, staff, and other council members (whether attending in person or telephonically) can hear the comments, motions and vote(s) of the member(s) attending such meeting telephonically.
 - d. The individual presiding over the meeting is physically present during the meeting.
 - e. Other than establishing the telephone connections, there shall be no communications between the member(s) attending by telephone and other members of council, unless such communication is part of the meeting, and can be heard by the members of the public in attendance.

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- f. All of the comments, motions, and votes of the member(s) attending telephonically must be capable of being recorded in the minutes of the meeting.
2. If such a meeting is held (where a member(s) attends telephonically pursuant to the above conditions), the member(s) attending telephonically shall be considered present at the meeting and shall have all of the powers held by a council member at such meeting.

Pursuant to S.C. Code Ann. § 30-4-20(d) for purposes of this State's Freedom of Information Act (FOIA), a "meeting" is defined as "...the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." (emphasis added). A prior opinion of this office dated November 17, 1980 stated that

...any telephonic meeting which you have must comply with all the provisions of the State's Freedom of Information Act. This would include the provision set forth in Section 30-4-60 of the Code to the effect that all meetings of the Council shall be open to the public. It would also include the requirements of giving notice of your meetings and keeping minutes of your meeting, which requirements are set forth in Section 30-4-80 and 30-4-90 of the 1976 Code of Laws as amended.

The opinion further states that

...an electronic or conference call meeting could be structured to comply with all the requirements of the Freedom of Information Act. In order to comply with the openness requirement and to provide a place wherein the meeting could be attended by interested members of the public, I would recommend your placing a speaker telephone in a conference room or other gathering place in the Commission offices which would allow several persons in a room to monitor what was taking place in the meeting and to communicate with Commission members as needed.

Another opinion of this office dated March 25, 1981 commented that "...meetings by means of telephone conference calls should be open to the public and that sufficient notice should be given as required by the Act. Minutes of these telephonic meetings must also be kept." The opinion also indicated that there must be compliance with notice requirements of the FOIA.

Consistent with such, it is my opinion that the procedure outlined above for telephonic meetings by the city council would comply with the FOIA. As to your question regarding whether an ordinance could be enacted adopting such requirements, I am uncertain as to why the enactment of an ordinance would be necessary or desirable. If the procedures outlined by you were adopted for telephonic meetings, in my opinion there would be sufficient compliance with the FOIA and it would

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not appear that the enactment of a separate ordinance outlining such would be necessary. In any event, an ordinance could not limit the FOIA. However, you may wish to consult with your city attorney regarding the necessity of any ordinance in your particular situation.

With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General