



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

June 13, 2002

The Honorable Richard M. Quinn, Jr.  
Member, House of Representatives  
518-C Blatt Building  
Columbia, South Carolina 29211

**Re: Informal Opinion**

Dear Representative Quinn:

You state that you are "concerned that Lexington Richland School District Five has violated State law. You outline your concern as follows:

[r]ecently, a former Lexington-Richland School District Five member, George Summers, contacted me regarding some questions he had with financial issues dealing with public funds.

I asked Mr. Summers to send his information to me that I included with a letter requesting the information as part of my legislative duties.

Enclosed you will find Mr. Summer's letters and my letter to the school district.

I would appreciate a legal opinion regarding whether a legislator is required to pay the costs for the information in this matter. It is my understanding that legislators are not required to pay charges for this type of information when carrying out their legislative duties.

We first turn to a discussion of South Carolina's Freedom of Information Act. The FOIA was adopted in its present form by Act No. 593, 1978 Acts and Joint Resolutions and was amended by Act No. 118, 1987 Acts and Joint Resolutions. The Act's preamble best expresses both the Legislature's intent in enacting the statutes, as well as the public policy underlying it. The preamble, set forth in § 30-4-15, provides as follows:

[t]he General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so

*Request Letter*

The Honorable Richard M. Quinn, Jr.

Page 2

June 13, 2002

that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

On numerous occasions, this Office has emphasized its approach in construing the Freedom of Information Act consistent with the Legislature's above-referenced expression of public policy. In Op. Atty. Gen., Op. No. 88-31 (April 11, 1998), we summarized the rules of statutory construction which this Office follows in interpreting the FOIA thusly:

[a]s with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to ascertain and give effect to the legislature's intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

In essence, the rule of thumb to which this Office has consistently adhered with respect to any Freedom of Information Act question is: when in doubt, disclose.

Section 30-4-30(b) of the Freedom of Information Act states in pertinent part that "... members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties." It is my understanding that the agency in question took the position that your request for documents was not an action which "relates to [your] legislative duties." It is also my understanding that the school district in question is in your legislative district. Thus, we must address the question of whether your request for documents from Lexington School District Five is a request by a member of the General Assembly whose request "relates to [his or her] legislative duties." It is our opinion that it is.

Article XI, § 3 of the South Carolina Constitution states as follows:

[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning, as may be desirable.

In Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1987), our Supreme Court, in construing Article XI, § 3, stated that such provision

... is similar to a section contained in the South Carolina Constitution in 1946 which required the General Assembly "... to provide for a liberal system of free public schools ... ." See Article XI, Section 5, Constitution of South Carolina, repealed by Act 653, Acts and Joint Resolutions of South Carolina, 1954. The trial court noted that in 1946, the South Carolina Supreme Court made the following comments about this provision which are also applicable to present day Article XI, Section 3:

[t]he Constitution ... places very few restrictions on the powers of the General Assembly in the general field of public education. It is required to "provide for a liberal system of free public schools," but the details are left to its discretion ... . Hildebrand, et al. v. High School District No. 32, et al, 138 S.C. 445, 136 S.E. 757 (1927) ... .

The development of our school system in South Carolina has demonstrated the wisdom of the framers of the Constitution in leaving the General Assembly free to meet changing conditions.

See, Moseley v. Welch, 209 S.C. 19, 33-34, 39 S.E.2d 133, 140 (1946).

With this general background in mind, it is important to note that, quite often, the General Assembly enacts local legislation concerning local school districts. As the Supreme Court has noted, "[c]reation of different provisions for school districts does not impinge upon the 'Home Rule' Amendment because public education is not the duties of the counties, but of the General Assembly." Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975).

Accordingly, where a member of the General Assembly requests certain documents of a school district in his or her legislative district, certainly, such action "relates to their legislative duties." The request may be made for the purpose of determining whether legislation concerning that school district is advisable or may be taken as part of the legislator's concern or interest regarding education generally. Moreover, the request may be made on behalf of a constituent who is concerned about school district practices or procedures. Of course, a legislator represents each constituent in his or her district. See Vander Linden v. Hodges, 193 F.2d 268 (1999) ["one person, one vote" requirement of the Constitution mandates that constituents of legislative delegation be represented equally.] Thus, it is my opinion that the request in question is one which relates to your

The Honorable Richard M. Quinn, Jr.  
Page 4  
June 13, 2002

legislative duties pursuant to § 30-4-30(b) and copies of the requested documents should be provided to you free of charge.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook  
Assistant Deputy Attorney General

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