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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 26, 2002

Latonya Dilligard Edwards, Chief Counsel
South Carolina Commission for the Blind
P. O. Box 79
Columbia, South Carolina 29202-0079

Dear Ms. Edwards:

You have asked for clarification concerning whether the Freedom of Information Act precludes the disclosure of executive session discussions by a board member to a private organization or to a member of the public. You have also inquired as to whether "other state laws are implicated by the disclosure of executive session discussions pursuant to S.C. Code § 30-4-70."

This Office has written opinions regarding this question which are enclosed for your review.

In Op. Atty. Gen., March 23, 1983, this Office commented that "there is no mandatory restriction either upon the public body or the individual members of that body against the disclosure of an individual's vote or the reasons for that vote on any topic taken up during the [executive] session." That opinion added that "[t]he only preventative solution to individual disclosure of the contents of the executive session discussions and individual votes would be by the rules of conduct or regulations adopted by the particular Board in issue with appropriate sanctions attached in the event of disclosure."

Then, in an opinion dated September 21, 1984, we questioned whether or not an attempt to sanction an individual member of a public body for revealing discussions of that body while in executive session were in contravention of the First Amendment. That opinion discusses in detail the Louisiana case Dean v. Guste, (La.), 414 So.2d 862 (1982). As we noted in the opinion,

> [t]he principal holding by the Court in Guste was that a regulation which prohibited a board member from actually recording by mechanical means board proceedings conducted in executive session was valid. However, the Court clearly suggested that it was important to its decision that the board member "remains free to publish whatever he chooses concerning any matters entertained by the School Board, limited only by his own discretion and the laws of the State governing defamations." 414 So.2d at 864. The Court further recognized that there existed "legitimate First

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> Amendment concerns" in the members' conveying to the public the details of the School Boards' executive sessions "as completely and accurately as possible." Id. ... [T]he case can be read as suggesting that if the board were to prohibit any dissemination of executive session information such a rule would constitute a prior restraint and be constitutionally impermissible. ... I would caution that these First Amendment implications be considered ... .

This advice, rendered in 1984, remains valid today, in my opinion.

This letter is an informal opinion only. It has been written by a designated Assistant 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

RDC/an
Enclosures