



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

June 28, 2000

Samuel W. Howell, IV, Esquire
Charleston County Attorney
Post Office Box 1119
Charleston, South Carolina 29402-1119

RE: Informal Opinion

Dear Mr. Howell:

Your opinion request has been forwarded to me for reply. I apologize for the delay in responding to your request but, as you know, the statute in question has been the subject of recent litigation and legislative amendment. These matters have now been resolved.

You have informed this Office that pursuant to S.C. Code Ann. § 4-9-30(12), Charleston County imposes a business license tax on the conduct of business in the unincorporated areas of the county. County agents conduct inspections and make audits for purposes of enforcing the business licence imposed by county ordinance. Any person aggrieved by a final assessment, charge back from an audit, or a denial of a business license may appeal to the Business License/User Fee Appeals Board. The decision of the appeals board is final unless appealed to the Charleston County Council within ten days of service of the Board's decision. County Council reviews the record and decides the appeal without further hearing. County Council's decision is then appealable to the circuit court.

In your opinion request, you state:

During the 1999 term of the legislature, Act No. 111 of 1999 was enacted, effective 30 June 1999. Section 1 of Act No. 111 (codified at Section 6-1-120(A)) provides that "it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the information provided by taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality, pursuant to a

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county or a municipal ordinance imposing a : ...(2) business license tax authorized under Section 4-9-30(12)....”

Paragraph (B) of that section provides that “nothing in this section prohibits the ... (2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality or an agent retained by an officer or employee in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application.”

It appears to me that the statute contemplates that materials obtained in the application or as a result of an audit of the taxpayer, in a contested case subject to an appeal, may be released to the members of the County Council for use in their evaluation of the appeal.

Pursuant to the Freedom of Information Act (S.C. Code Section 30-4-60), the meeting of Charleston County Council at which the appeal of a business license matter is to be considered must be open to the public. I have been unable to identify any exemption from the definition of “public record” contained in S.C. Code Section 30-4-20(c) for the record on appeal to Charleston County Council in a business license appeal matter. Consequently, it appears to me that any person has a right to inspect and copy that record under S.C. Code Section 30-4-30(a).

In summary, it appears to me that the application and materials gathered by county officers in an inspection or audit which becomes the matter of an appeal by the taxpayer may be properly disclosed to the members of Charleston County Council for that appeal. As a result of the Freedom of Information Act, those materials become fully disclosable to the public as a result of being a public record and as part of a public meeting of Charleston County Council. Because of the severe penalties involved in violation Act No. 111 of 1999 (fine or imprisonment or both, and loss of employment for five years), I should greatly appreciate your assistance and opinion in analyzing this situation. Business license appeals occur routinely several times each year for Charleston County government. It is thus, a matter of continual concern and on-going importance.

The General Assembly recently amended S.C. Code Ann. § 6-1-120 by Act No. 269 of 2000. The section now provides as follows:

(A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the financial information, or other information indicative of units of goods or services sold, provided by a taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

(1) tax authorized under Article 5 or Article 7;

(2) business license tax authorized under Section 4-9-30(12) or Section 5-7-30;

(3) fee the measure of which is:

(a) gross proceeds of sales of goods or services; or

(b) paid admissions to a place of amusement.

(B) Nothing in this section prohibits the:

(1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;

(2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, or an agent retained by an officer or employee, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;

(3) sharing of data between public officials or employees in the performance of their duties.

(C) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be

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dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction.

The first issue raised in your request is "[i]t appears to me that the statute contemplates that materials obtained in the application or as a result of an audit of the taxpayer, in a contested case subject to an appeal, may be released to the members of the County Council for use in their evaluation of the appeal." I agree with your assessment of this issue. Section 6-1-120(B)(2) specifically provides that nothing in the section prohibits the "inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, or an agent retained by an officer or employee, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application." This past legislative session, the General Assembly further clarified this issue by adding Section 6-1-120(B)(3) which provides that nothing in the section prohibits the "sharing of data between public officials or employees in the performance of their duties." Accordingly, Section 6-1-120 does not bar the release of taxpayer information to members of county council for use in the evaluation of an appeal.

The next issue raised in your request is:

Pursuant to the Freedom of Information Act (S.C. Code Section 30-4-60), the meeting of Charleston County Council at which the appeal of a business license matter is to be considered must be open to the public. I have been unable to identify any exemption from the definition of "public record" contained in S.C. Code Section 30-4-20(c) for the record on appeal to Charleston County Council in a business license appeal matter. Consequently, it appears to me that any person has the right to inspect and copy that record under S.C. Code Section 30-4-30(a).

Section 30-4-40 lists those items which may be exempt from disclosure under the FOIA. It would appear that information discussed in Section 6-1-120 may be exempt as "[M]atters specifically exempted from disclosure by statute or law." S.C. Code Ann. § 30-4-40(a)(4). Pursuant to Section 30-4-40(b), if a public record contains material which is exempt, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of the FOIA. Thus, it would appear that county council would be entitled to redact information discussed in Section 6-1-120 from the record before allowing an individual to inspect or copy the record.

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I would also like to call your attention to the recent case The State-Record Co., Inc. Plaintiffs, v. City of Columbia, Defendant, C.A. No. 99-CP-40-3284. In this case, the circuit court declared that:

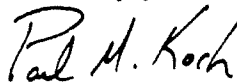
... §6-1-120(A) must be read to preclude disclosure only of financial information contained in business license applications. Based on this determination, the court concludes that defendant's failure to provide public access to the non-financial information contained in business license applications, including specifically the name of the applicant, and the name, location and type of business, is a violation of the FOIA.

Based on this declaration, the court ordered that defendant be permanently restrained and enjoined from withholding public access to the non-financial information contained in a business license application, including specifically the name of the applicant and the name, location, and type of business for which a license is sought.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General