



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 18, 2001

Darrell Thomas Johnson, Jr. Esquire
Jasper County Attorney
Post Office Box 1125
Hardeeville, South Carolina 29927

RE: Informal Opinion

Dear Mr. Johnson,

By your letter of June 19, 2001, you have requested an opinion of this Office concerning the propriety of the actions of the Jasper County Council in approving the county's purchase of military time for county employees over the age of fifty and with at least ten years of service to the county. In your opinion to the County you indicate that the issue was discussed in executive session, but ratified in open session. You also note that "[a]pparently the open session was not actually attended by anyone not involved in the Executive Session."

The South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. Sec. 30-4-10 *et seq.*, has as its purpose the following:

[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 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.

S.C. CODE ANN. § 30-4-15. In view of the expressed legislative purpose, this Office has noted that the Freedom of Information Act "is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly." OPS. ATTY. GEN. Mar. 27, 1984; Feb. 22, 1984; Aug. 8, 1983; Nov. 14, 1989. See also, Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991).

Respectfully,

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exists." Thus, a court could order any equitable remedy it deems appropriate given the facts of each case. This Office does not adjudicate questions of fact and cannot predict how a court would rule after reviewing the totality of the circumstances in Jasper County. However, some case law in South Carolina may provide guidance on the matter.

In Piedmont Public Service District v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (1995), the South Carolina Court of Appeals held that a public service district violated the Freedom of Information Act by going into executive session to vote on the termination of an administrator. In the executive session, the commissioners of the district voted to terminate the administrator without cause and then signed a separate severance agreement in which he would be paid \$37,781.40 annually for five years. The administrator was paid \$30,000 immediately and was to be paid \$7,781.40 on January 5, 1993. Approximately one month after the vote, the commissioners notified the administrator that the vote and signing of the agreement in executive session had been conducted in violation of the Freedom of Information Act and was therefore invalid. They ordered him to repay the \$30,000 and other benefits received. The administrator refused and was fired for insubordination. See id. at 127, 459 S.E.2d at 877.

The district brought an action against the administrator seeking a judgement of \$30,000 and a determination that the employment contract, including the severance agreement, was void as a matter of public policy. The trial court found for the district, holding that the vote taken in violation of the Freedom of Information Act was ineffective. The Court of Appeals found no abuse of discretion on the part of the trial court in ordering the invalidation of the vote. See id. at 130, 459 S.E.2d at 879. Similarly, in Business License Opposition Committee v. Sumter County, 311 S.C. 24, 426 S.E.2d 745 (1992), the South Carolina Supreme Court held that a special master did not abuse his discretion when he invalidated an ordinance improperly adopted at a closed meeting of county council.

Although Piedmont Public Service District is the more analogous of the two cases cited above to the situation in Jasper County, both cases involve the invalidation of an action of a public body as a result of a violation of the Freedom of Information Act. However, both cases also are distinguishable from the circumstances in Jasper County because the actions invalidated by the court were themselves improper. In Jasper County, the Council's vote to purchase the military time was not conducted improperly; the Council returned to open session before taking the vote. Instead, only a *discussion* about a personnel policy arguably violated the Act. Because the Council took no action during the executive session, there is not a direct connection between a violation of the Act and an action of the council. The argument that a vote of the county council at open session should be invalidated and appropriated funds returned because of an improper discussion in executive session is probably unlikely to succeed. This issue apparently has not been decided in South Carolina and would extend beyond the scope of Piedmont and Business License Opposition Committee.

In sum, whether the county would prevail in a suit pursuant to the Freedom of Information

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Act to invalidate the actions of the county council and recoup the county's funds is unclear. A court would first have to find that a violation did, in fact, occur when the council met in executive session to discuss a personnel matter. The court would also have to find that the violation justified the invalidation of an otherwise proper vote. Finally, a court would then have to order as an equitable remedy that the funds be returned to the county. As there is no case law directly on point in South Carolina, the likelihood of the county's success in receiving this remedy is far from certain. Of course, there is the possibility that a court could enjoin similar future acts of discussing matters in executive session which must be discussed in open session.

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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script, appearing to read "Susannah R Cole".

Susannah Cole
Assistant Attorney General