

The State of South Carolina



Office of the Attorney General

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January 21, 1992

The Honorable Patrick B. Harris
Chairman, Joint Appropriations
Legislative Review Committee
Suite 213, Blatt Building
Columbia, South Carolina 29211

Dear Representative Harris:

You have advised that the Joint Appropriations Review Committee ("JARC") is a joint legislative committee responsible for authorizing receipt and expenditure of non-State appropriated funds that are not included in the annual appropriations act. JARC meets monthly during the legislative session and every two months when the Legislature is not in session to consider authorization requests from state agencies.

Occasionally, an emergency situation requires immediate action by the Committee, and in these cases a state agency may request that the Committee be polled by telephone for a decision. You have expressed concern that a telephone poll of this kind may be a violation of the Freedom of Information Act. You have requested our opinion on the issue.

JARC's policy on Committee polls was attached to your letter and provides the following:

1. An Agency request for immediate action must be made in writing, and include an explanation of the request and the need for immediate action.
2. The material submitted by the Agency will be mailed to each Committee member, and a follow-up poll will be conducted by the staff after sufficient time for review.

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3. An attempt will be made to contact every Committee member for a vote.
4. Nine affirmative votes will be required for Committee approval of the Agency request.

A review of the statutes establishing JARC and authorizing its actions, § 2-65-5 et seq., S.C. Code Ann. (1990 Cum. Supp.), does not reveal any statutory method which would govern this decision-making process.

Generally, it is recognized that

[a] municipal or county council or a legislative body can act only as a body and when in legal session as such. And the powers of a municipal council or body must be exercised at a meeting which is legally called. Action of all the members of the council [or body] separately is not the action of the council [or body], and an agreement entered into separately by the members of the council [or body] outside a regular meeting is not binding.

56 Am.Jur.2d Municipal Corporations, etc. § 155. Moreover, it has been stated that

[t]he powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts and specifically acts involving discretion and judgment, particularly acts in a judicial and quasi-judicial capacity, are official only when done by the members formally convened in session, upon a concurrence of at least a majority, and with the presence of a quorum of the number designated by statute.

2 Am.Jur.2d Administrative Law § 288.

An earlier opinion of our Office, Op. Atty. Gen. No. 84-111 dated September 6, 1984, considered whether a county legislative delegation might circulate a petition among the individual members for the approval of a budget. Citing the foregoing authority and numerous decisions from other jurisdictions, our Office concluded that the delegation, as a

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public body, would be required to meet collectively in a formally convened meeting to act upon matters over which it has authority. A copy of that opinion is enclosed herewith; the reasoning and authority cited therein would apply equally to the situation faced by JARC: that JARC should most probably convene in a meeting to discuss or act upon a matter over which it has supervision, jurisdiction, advisory power, or control. A telephone poll by Committee staff members would not be considered a meeting.

A telephone conference call would appear to be one means of handling a matter in an emergency situation such as your letter describes. A meeting is defined by § 30-4-20(d) to be "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.) This Office has advised previously that such language authorizes a meeting to be convened by means of a telephone conference call, Ops. Atty. Gen. dated March 25, 1981 and November 17, 1980, apparently at least in the absence of a statute requiring a public body to meet physically in a certain place. (Copies of these opinions are enclosed.) Thus, if JARC were to convene via a telephone conference call set up as described in these two opinions, with public notice requirements of § 30-4-80(b) observed, so that it may act collectively rather than its members acting individually and independently of each other, such would appear to comply with the requirements of the Freedom of Information Act.

In conclusion, we must point out that general law, rather than the Freedom of Information Act, is the source of the requirement that a public body act collectively, in a meeting, to conduct its business; the Freedom of Information Act reinforces that principle and provides the guidance as to quorum, notice, and such requirements. Without question, the Act applies to meetings of the Legislature and its committees; see § 30-4-70(d); § 30-4-80(b); § 30-4-40(a)(8). Thus, the practice of telephone polls to handle matters over which JARC has authority would most probably not comply with the Act. Instead, a meeting of JARC, either corporally or by means of electronic equipment (i.e., a telephone conference call) would be the preferable way to handle such emergency situations as detailed above.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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