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January 26, 1988

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
512 Gressette Building
Columbia, South Carolina 29202

William M. Brice, Jr., Esquire
York City Attorney
Post Office Box 275
York, South Carolina 29745

Gentlemen:

By your respective letters, you have asked for the opinion of this Office as to the appropriateness of an executive session during a meeting of the York City Council to discuss issues which are apparently causing some conflict between the Mayor and City Manager of York. Mr. Brice, the City Attorney, opined that the executive session would not be appropriate, since the executive session would not be convened "for the purpose of promoting, demoting, reprimanding or chastising the City Manager." As a result, the City Council decided not to enter executive session. You have both inquired as to the permissibility of entering executive session for such a purpose.

The minutes furnished to this Office from the meeting in question (held in early December 1987) reflect the following on this sequence of events:

2. MOTION was made by Councilman Ebersold, seconded by Councilman Connolly, to call for an executive session, if legally possible, to attempt to alleviate strain between city manager and mayor/council, and to resolve personnel problems. The city manager objected, saying that he had requested executive sessions in the past and had been told by the city attorney that they were not legal for the topics proposed for discussion. The city attorney was directed

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to submit his opinion regarding legality to the attorney general, and upon receiving the attorney general's written opinion, to report to Council. A vote was not taken on the motion.

* * *

In its present form, South Carolina's Freedom of Information Act was adopted as Act No. 593, 1978 Acts and Joint Resolutions, as amended by Act No. 118, 1987 Acts and Joint Resolutions. The public policy of the Act as expressed in the preamble of Act No. 593 of 1978 was codified by Act No. 118 of 1987; Section 30-4-15 now provides:

The 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.

As 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).

Section 30-4-60 of the Code requires that "[e]very meeting of all public bodies shall be open to the public unless closed

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pursuant to §30-4-70 of this chapter." Section 30-4-70 enumerates the very limited circumstances for which an executive session may be convened and further specifies the procedures to be followed in convening in executive session. In relevant part, Section 30-4-70 provides:

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee... 1/

* * *

- (6) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the specific purpose of the executive session. No formal action may be taken in executive session. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action. No vote may be taken in executive session.

It appears that an attempt "to alleviate strain between city manager and mayor/council" does not fall within the plain and unambiguous terms of Section 30-4-70(a)(1). The matters to be discussed vis-a-vis the city manager, the mayor, and council members must necessarily relate to the "employment, appointment, compensation, promotion, demotion, discipline, or release of an employee" such as the city manager would be. According to information supplied by the York City Attorney as noted earlier, the issues to be addressed did not include "promoting, demoting,

1/ The remainder of the authorized reasons for which an executive session may be convened are not relevant to your inquiry.

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reprimanding or chastising the City Manager." Because open meetings are the rule and exceptions thereto must be construed narrowly, we must concur with the City Attorney that an executive session would not have been appropriate in this instance.

Additionally, this Office was asked about the appropriateness of requesting an executive session to discuss personnel matters without stating the specific action to be discussed. As noted above, Section 30-4-70(a)(6) now requires that "the specific purpose of the executive session" be announced. The word "specific" was added by Act No. 118 of 1987 and means "precise," "definite," "explicit," Robert Bosch Corporation v. United States, 305 F.Supp. 921, 924 (U.S.Cust.Ct. 1969); more than perfunctory or general, Ed Hall Drilling Company v. Profitt, 424 S.W.2d 403 (Ky.Ct.App. 1968); the very opposite of "general." State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 37 N.W.2d 502 (1949).

Because the General Assembly has mandated that the specific purpose of an executive session be announced prior to so convening, we do not deem an announcement that "personnel matters" will be discussed to be in compliance with Section 30-4-70(a)(6). Indeed, before the 1987 amendment to Section 30-4-70, this Office advised:

Clearly, we believe the Act contemplates that executive sessions should be preceded by the disclosure of such information as is sufficient to apprise the public in attendance of the subject matter to be undertaken. In this instance, while a court could find that the public announcement that "personnel matters" were to be discussed was sufficient to go into executive session to select all the officers in question, clearly a more detailed and specific announcement as to each position would have been preferable, given the purpose of the Act.

Op. Atty. Gen. No. 84-46, dated April 24, 1984. Since the issuance of this opinion, the General Assembly has mandated that the specific purpose be announced; this change in the law makes even stronger the basis for our advice that sufficient information be disclosed to apprise the public of the nature of discussions to be held in executive session.

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Based on the foregoing, it is the opinion of this Office that:

1. Convening in executive session to discuss differences which were causing some conflict between the Mayor and City Manager of York would not be in keeping with the requirements of Section 30-4-70(a)(1), which permits the convening of an executive session for the limited purposes of discussing "employment, appointment, compensation, promotion, demotion, discipline, or release of an employee" In so concluding, we concur with the opinion of the York City Attorney.

2. Merely stating that an executive session will be convened for the discussion of "personnel matters" is not sufficient, as the 1987 amendment to Section 30-4-70(a)(6) requires that the specific purpose of the executive session be announced. An announcement specifically apprising the public in attendance at the meeting of the subject matter to be discussed is mandated.

With kindest regards, I am

Sincerely,


T. Travis Medlock
Attorney General

TTM/rhm