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The State of South Carolina

Opinion No 88-3
P24

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The Honorable Ryan C. Shealy
Senator, District No. 24
Post Office Box 966
Lexington, South Carolina 29072

Dear Senator Shealy:

By your letter of December 10, 1987 and enclosure, you have asked whether the Freedom of Information Act would prohibit the filming of a public meeting of a public body by a member of the public using a home video camera. In particular, you are asking whether the Act would allow the "capturing of one's likeness on film against his wishes" or, in other words, the invasion of one's privacy.

The Freedom of Information Act, in Section 30-4-90(c) of the Code of Laws of South Carolina (1986 Cum. Supp.), provides:

> All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to §30-4-70 of this chapter [for executive session], provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body shall not be required to furnish recording facilities or equipment.

Thus, the Act itself specifically permits the recording of a meeting of a public body by any person in attendance by means of a tape recorder or "any other means of sonic reproduction." We have been unable to locate a court decision construing the phrase "sonic reproduction;" however, the term "sonic" is defined as "utilizing, produced by, or relating to sound waves." Webster's Third New International Dictionary 2173 (1976). If a home video camera is capable of recording sounds, as well, such

appears to fall within the specific provisions of Section 30-4-90(c) of the Code.

Even if taping a public meeting by means of a home video camera should not be specifically within the terms of Section 30-4-90(c), we note that public meetings of public bodies are routinely video-recorded for broadcasting purposes by the news media. Such recording includes both audio- and video-taping and is in keeping with the policy and spirit of the Act to permit the public to learn and report fully the activities of public officials. See Sections 30-4-15 of the Code and Section 2 of Act No. 593 of 1978. We further note that nowhere in the Act are distinctions made between members of the news media and private citizens as far as rights under the Act are concerned. Thus, we would conclude that recording a public meeting of a public body by anyone in attendance, by either audio or video means, would be permissible, as long as there is no active interference with the meeting and the individual wishing to record the meeting provides his own equipment.

Your further concern, however, is that the video-taping of a meeting may violate one's right of privacy. In addressing your concern, it is assumed that you are referring to the right of privacy of the members of a public body, a city council in this instance. It is further assumed that the likenesses of the city council members are not being appropriated for commercial purposes of the video-recorder, that the individual is recording the public meetings and officials for his own, non-commercial purposes.

The South Carolina Supreme Court in Meetze v. The Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956), defined the right of privacy as

> the right of an individual to be let alone, to live a life of seclusion, to be free from unwarranted publicity. ... The following has been suggested as a fairly comprehensive definition of what constitutes an actionable invasion of the right of privacy: "The unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities." ...

Thus, the right of privacy has been recognized, and the breach thereof can give rise to a cause of action under any one of the three theories as described in the cited passage. Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984).

The court in Meetze recognized that the right of privacy is not absolute, however:

> The right of privacy is not an absolute right. Some limitations are essential for the protection of the right of freedom of speech and of the press and the interests of the public in having a free dissemination of news and information. None of these rights are without qualification. ...
>
> One of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest. ...
>
> A person may by his acts, achievements or mode of life become a public character and lose to some extent the right of privacy that otherwise would be his. There are times when one, whether willingly or not, becomes an actor in an occurrence of public or general interest. When this takes place, he emerges from his seclusion and the publication of his connection with such occurrence is not an invasion of his right of privacy. ... The law does not recognize a right of privacy in connection with that which is inherently a public matter.

Meetze v. The Associated Press,, supra, 230 S.C. at 336-337 (emphasis added); also Frith v. Associated Press, 176 F. Supp. 671 (E.D.S.C. 1959); Shorter v. Retail Credit Company, 251 F. Supp. 329 (D.S.C. 1966).

Courts have also stated that where an individual has adopted a profession or performs such activities as would give the public a legitimate interest in his activities, the individual becomes a public figure and relinquishes a part of his right of privacy. Cohen v. Marx, 94 Cal. App. 2d 704,211 P.2d 320 (1949). Such an individual has "voluntarily exposed himself to the public eye." Id., 211 P.2d at 321. In addition, where governmental officials are engaged in the performance of their

official duties, "particularly of the type which [are] by the very nature of things likely to be performed in public," such is generally not protected by the right of privacy. Hull v. Curtis Publishing Company, 182 Pa. Super. 86, 125 A.2d 644, 651 (1956). See also Martin v. Dorton, 50 So.2d 391 (Miss. 1951); 62 Am.Jur.2d Privacy §21 et seq.; 77 C.J.S. Right of Privacy; Annot., 14 A.L.R.2d 750.

Based on the foregoing, it is the opinion of this Office that, under the Freedom of Information Act, recording a public meeting of a public body by means of a home video camera would be permitted, assuming that such recording is done in a manner non-disruptive to the public meeting. Such recording of public figures would not violate their right of privacy since, by virtue of their public service, they have voluntarily placed themselves before the public and they have relinquished part of their rights of privacy.

With kindest regards, I am

Sincerely,

T. Travis Medlock
Attorney General

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