

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

May 26, 1988

H. Spencer King, Esquire  
Spartanburg City Attorney  
Post Office Box 3483  
Spartanburg, South Carolina 29304

Dear Mr. King:

As you were advised by Attorney General Medlock's letter of December 23, 1987, he has referred your letter of December 16, 1987 to me for research and response. You had asked for clarification of the first paragraph of the second column of "The Attorney General's Opinion" in the November 1987 issue of Uptown, the bulletin of the Municipal Association of South Carolina.

The Attorney General's column in that issue of Uptown focused on the 1987 amendments to the Freedom of Information Act. See Act No. 118, 1987 Acts and Joint Resolutions; Section 30-4-10 et seq., Code of Laws of South Carolina (1987 Cum. Supp.). The amendment referenced in your question is found in Section 30-4-70(a)(1) of the Code, which now provides that a meeting closed to the public may be held for the

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held such employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion,

Mr. King  
Page 2  
May 26, 1988

from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

....

You have advised that the City of Spartanburg has a Civil Service Commission which, among other duties, hears appeals in instances in which a city department head has disciplined a city employee. You have asked whether discussions by the Commissioners following a hearing with respect to any decision must also be public if the hearing has been made public at the request of the employee. The answer to your question depends upon how the procedure is characterized: as an appellate proceeding or the original personnel action.

The Civil Service Commission of the City of Spartanburg 1/ is composed of three citizens selected by the Mayor and City Council who, in addition to testing applicants for employment, act as an appellate body for disciplinary actions. In the event that a department head disciplines an employee in the form of suspension, demotion, or the like, that employee has a right to appear before the Civil Service Commission, which may affirm, reverse, or modify the decision of the department head. Appeals from the Commission are to the circuit court. For purposes of this opinion it is assumed that the Commission would be a public body, as that term is defined in Section 30-4-20(a) of the Code, and thus subject to the terms of the Freedom of Information Act.

The situation which you describe appears to involve two distinct aspects: a public adversary hearing and the discussion following the hearing. A "hearing" usually means the hearing of evidence and arguments thereon in a cause. Shields v. Utah Idaho Central Railway Company, 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111 (1938). It is comprised of the opportunity to adduce proof and further to argue as to the inference thereof, Seibold v. State, 287 Ala. 549, 253 So.2d 302 (1970), to meet and rebut evidence and to cross-examine witnesses, Whirlpool Corporation v. State Board of Tax Commissioners, 167 Ind. App. 216, 338 N.E.2d 501 (1975), and includes the right to be present and put forth one's contentions. People v. Richetti, 302 N.Y. 290, 97 N.E.2d 908 (1951). Discussion of the discipline of employees is

---

1/ See Act No. 991, 1966 Acts and Joint Resolutions, particularly section 8.

Mr. King  
Page 3  
May 26, 1988

a permissible, though not mandatory, subject for a public body to meet in executive session; such discussion does not appear to be within the generally-accepted definition of "hearing" and thus could be treated separately from the adversary hearing unless the procedure is characterized as appellate and quasi-judicial in nature, in which case a different result is compelled.

This Office has opined on several occasions that when a public body has been charged with adjudicatory functions, the Freedom of Information Act does not authorize such a public body to enter executive session for purposes of deliberation on matters of public record. Ops. Atty. Gen. dated October 30, 1985; October 2, 1985; February 8, 1979, enclosed. While the opinions were felt to be not free from doubt, such opinions were in accordance with court decisions from other jurisdictions such as Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973)(a board exercising quasi-judicial functions is not part of the judicial branch of government; its meetings must be open to the public, generally); Citizens Action Coalition of Indiana, Inc. v. Public Service Commission of Indiana, 425 N.E.2d 178 (Ind. Ct. App. 1981)(agency was not vested with judicial powers and thus must deliberate at meetings open to the public); Appeal of Emmanuel Baptist Church, 364 A.2d 536 (Pa. Cmwlth. 1976)(zoning hearing board is quasi-judicial, not judicial, and must reach its decisions in an open meeting). If the Civil Service Commission is characterized as a quasi-judicial, appellate body, then there appears to be no authorization for the Commission to convene in executive session to deliberate on a publicly held hearing which is a matter of public record. Of course, convening in executive session for other reasons authorized by Section 30-4-70 of the Code would be permissible.

In conclusion, it is the opinion of this Office that if the Civil Service Commission of the City of Spartanburg is acting in an appellate, quasi-judicial capacity in hearing appeals of city employees who have been disciplined by their department heads, there appears to be no authorization for the Commission to deliberate in executive session.

Mr. King  
Page 4  
May 26, 1988

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:sds

Enclosures

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS