

The State of South Carolina



Office of the Attorney General

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October 18, 1988

Phyllis M. Mayes
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Dear Phyllis:

As a result of your recent telephone conversation with Attorney General Medlock and my recent telephone conversation with Stephen C. Osborne of your Office, I understand that you are seeking legal advice as to what policies or rules the Division of Human Resource Management ["DHRM"] of the State Budget and Control Board can promulgate concerning the use of a tape recorder or any other means of sonic reproduction at a hearing of the State Employee Grievance Committee. This letter will respond to that inquiry.

The State Employee Grievance Committee is created by statute "to serve as an administrative hearing body for state employee grievances." S.C. Code Ann. §8-17-340 (1976). The State Employee Grievance Committee "may sustain, reject, or modify a grievance hearing decision of an agency" with specific exceptions in cases involving actual or threatened mental or physical abuse of a patient or inmate by an employee. Id. Appeals from the State Employee Grievance Committee are to the Circuit Court. Id. For purposes of this legal advice, the State Employee Grievance Committee is assumed to be a public body as that term is defined in S.C. Code Ann. §30-4-20(a) (1976) and, therefore, subject to the terms of the Freedom of Information Act. Cf. S.C. Att'y Gen. Op., May 26, 1988 (The Civil Service Commission of the City of Spartanburg, which acts as an appellate body for employee disciplinary actions, was assumed to be a public body as defined in S.C. Code Ann. §30-4-20(a) (1976)).

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As you are aware, this Office has been guided, in construing the Freedom of Information Act, by the General Assembly's express findings and intent:

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.

S.C. Code Ann. §30-4-15 (1976). See, e.g., S.C. Att'y Gen. Op., April 11, 1988.

S.C. Code Ann. §30-4-70(a)(1) (1976) provides:

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

In addition, §30-4-90(c) provides:

All or any part of a meeting of a public body may be recorded by any person in

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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, 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.

S.C. Code Ann. §30-4-90(c) (1976).

Analyzing §30-4-90(c), this Office has previously opined concerning "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." S.C. Att'y Gen. Op., Jan. 14, 1988. This Office stated:

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 the 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

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there is no active interference with the meeting and the individual wishing to record the meeting provides his own equipment.

Id.¹

Relying on the analysis in S.C. Att'y Gen. Op., Jan. 14, 1988, as applicable to an administrative hearing before the State Employee Grievance Committee, recording of such hearing by anyone in attendance, by either audio or video means, would be permissible pursuant to §30-4-90(c), as long as there is no active interference with the meeting and the individual wishing to record the meeting provides his own equipment. Whether or not such recording resulted in active interference with the meeting would, a fortiori, depend on the specific facts and circumstances in existence at the meeting. Although the State Budget and Control Board has general statutory authority to promulgate policies and programs concerning grievance procedures, see S.C. Code Ann. §8-11-230(6) & -240 (1976), the actual determination of whether or not the specific recording of a hearing of the State Employee Grievance Committee pursuant to §30-4-90(c) constitutes active interference with the hearing would need ultimately to be made at the hearing.

The person who chairs the State Employee Grievance Committee, pursuant to S.C. Code Ann. §8-17-340 (1976), is authorized to "conduct the grievance hearing in an equitable, orderly, and expeditious fashion." Consequently, the person who chairs the State Employee Grievance Committee would be authorized to determine, apparently either sua sponte or upon motion of either party, whether the specific facts and circumstances related to the recording of the hearing pursuant to §30-4-90(c) constitute active interference with the conduct of the meeting.

¹ S.C. Att'y Gen. Op., Jan. 14, 1988, neither addresses nor decides whether a different analysis and result applies when a quasi-judicial administrative hearing is involved. S.C. Code Ann. §30-4-20(d)(1976) defines "meeting" as that term is used in the Freedom of Information Act. Cf. S.C. Sup. Ct. R 33, Canon 3(A)(7) (vol. 22A 1976) ("A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions," absent certain exceptions.).

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If I can answer any further questions, please do not
hesitate to contact me.

Sincerely,

Sam Wilkins

Samuel L. Wilkins
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:

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