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The State of South Carolina



Office of the Attorney General

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December 17, 1985

Thomas A. Babb, Esquire
Laurens County Attorney
Post Office Box 670
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Dear Mr. Babb:

By your letter of November 20, 1985, you have requested the opinion of this Office as to the applicability of South Carolina's Freedom of Information Act to an ad hoc committee appointed by Laurens County Council established to consider the long-range needs of Laurens County and make a report to County Council. Subsequent to your advising the committee that it was not subject to the Act, Op. Atty. Gen. No. 84-125 was brought to your attention. For the reasons following, it is the opinion of this Office that Opinion No. 84-125 would be applicable and thus the ad hoc committee would be subject to the Act.

The ad hoc committee was established as noted above. The members include a member of County Council, the Administrative Assistant for Laurens County Council, and several other citizens who have no connection to Laurens County government. There is no ordinance creating the committee, and the committee is not supported in whole or in part by, nor does it expend, public funds. Members are not paid, and they meet on their own time. The work of the committee involves members' taking "devil's advocate" positions on various matters such as public works, economic development, public health and safety, and so forth, considering benefits and detriments for various proposals with regard to long-range planning.

We have been further advised that a committee member meets individually with persons who have expertise in a particular field; then the committee member prepares and presents a position paper to the ad hoc committee, which then debates the merits of the position paper. Several public meetings are contemplated during January 1986. At the conclusion of the

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committee's work, a final paper will be prepared for Laurens County Council. At this time it is unknown how council will act upon the recommendations in the final paper: adopt them wholesale without debate, dismiss them entirely, debate them extensively, modify them, or so forth.

In an extensively-researched opinion of this Office, No. 84-125, it was concluded that an ad hoc citizens' advisory committee appointed by the Town Council of the Town of Hilton Head was subject to the requirements of the Freedom of Information Act. By an opinion dated July 28, 1983, it was concluded that the finance committee of a hospital board of trustees was subject to the Act. See also Op. Atty. Gen. No. 83-39, as to an advisory committee appointed by a legislative delegation being subject to the Act. At least one other opinion has concluded that entities which are merely advisory bodies and do not receive or expend public funds may not be subject to the Act. Op. Atty. Gen. No. 79-125. For the reasons following, we advise that the reasoning in the first three cited opinions would be applicable.

The first argument you have raised is that the ad hoc committee is not supported by and does not expend public funds. This factor is determinative in many instances in which the entity would not otherwise fall within the definition of a "public body," Section 30-4-20 (c), Code of Laws of South Carolina (1984 Cum. Supp.). See Sanders v. Benton, 579 P.2d 815 (Okla. 1978); Op. Atty. Gen. No. 83-39. It is undisputed, however, that Laurens County Council, the parent entity which created the ad hoc committee, is supported by and expends public funds. In determining whether a committee is subject to an open meetings or Freedom of Information act, the test of expenditure of or supported by public funds as to the committee is not controlling. Rather, the parent entity is examined in this regard. Sanders v. Benton, supra; Carl v. Board of Regents of University of Oklahoma, 577 P.2d 912 (Okla. 1978). On this basis, the ad hoc committee would be subject to the Freedom of Information Act.

A second argument, that the ad hoc committee is not authorized to take any final action and that Laurens County Council would debate and enact ordinances to implement any recommendations, was addressed in Opinion No. 84-125. Therein we stated that

[t]he giving of advice to a public body or official has been found to be a necessary governmental function. ... Where committees are found to be one

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step, however remote, in the decision-making process, courts tend to require committees to open their meetings. ... It appears to be immaterial that the ultimate decision-making body may reject the proposals or advice of the committee. ... [T]he ultimate question to be decided is whether the members of the committee have convened to exercise the powers, duties, or responsibilities vested in the committee and not whether the committee is "empowered to exercise the final powers of its parent body." [Citations omitted.]

Because the ad hoc committee is giving its advice or recommendations to Laurens County Council, the committee is exercising a governmental function and would thus be subject to the Act.

We would further point out that in determining whether an entity or its committee is subject to a Freedom of Information Act, courts have made no distinction between committees composed wholly of members of the parent entity and committees composed of other persons in place of or in addition to members of the parent entity. In Carl v. Board of Regents, supra, the Oklahoma Supreme Court concluded that the University's Admissions Board of the College of Medicine, consisting entirely of faculty, senior medical students, and physicians, was a "public body" for purposes of the Oklahoma Act. See also Op. Atty. Gen. dated June 1, 1984.

Concern has been expressed that because many alternatives are being considered toward making a recommendation, the news media and the public may misinterpret the various proposals or may jump to conclusions that may never be reached by the ad hoc committee in making its recommendations. In formulating its recommendations, the committee must freely exchange its ideas; it has been suggested that opening the meetings under the Act would inhibit the free flow of ideas and would promote misinterpretation. Most likely, this discussion would not be of the kind which would permit a committee to convene in executive session. See Section 30-4-70 (a) of the Code. Nor is it likely that Laurens County Council, the parent entity, could convene in executive session for this type of discussion. Thus, such discussions should be conducted openly.

Courts in other jurisdictions have considered these concerns in determining that various committees would be subject to the Act. The pitfalls in opening discussions of preliminary matters are detailed in Arkansas Gazette Company v. Pickens, 522 S.W.2d 350 (Ark. 1975) (Fogleman, J., concurring). Therein it

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was noted that matters of public policy are involved and that since the legislative branch of government declares public policy, the General Assembly should make the determination to open or close committee meetings. Until such time as the South Carolina General Assembly acts to close such meetings, we would advise that the ad hoc committee of Laurens County Council follow the general principle stated in Opinion No. 84-125:

If a public body is uncertain about the type of session to be conducted, open or closed, bear in mind the policy of openness promoted by the Public Meetings Laws and opt for a meeting in the presence of the public.

Grein v. Board of Education, 216 Neb. 158, 343 N.W.2d 718 (1984); Town of Palm Beach v. Gradison, 206 So.2d 473 (Fla. 1974).

For the foregoing reasons, it is the opinion of this Office that the ad hoc committee appointed by Laurens County Council to study the long-range planning for Laurens County would be subject to the requirements of the Freedom of Information Act.

Sincerely,

Patricia D. Petway

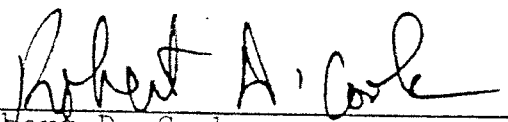
Patricia D. Petway
Assistant Attorney General

PDP:hcs

Enclosures:	<u>Op. Atty. Gen.</u>	No. 84-125
	<u>Op. Atty. Gen.</u>	No. 83-39
	<u>Op. Atty. Gen.</u>	dated July 28, 1983
	<u>Op. Atty. Gen.</u>	dated June 1, 1984

cc: Joe Babb

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions