

The State of South Carolina



Office of the Attorney General

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September 19, 1986

The Honorable Alex Harvin, III
The Majority Leader
House of Representatives
Post Office Box 266
Summerton, South Carolina 29148

Dear Representative Harvin:

You have requested the opinion of this Office on whether a state agency may lease state property to private individuals and then refuse to release the names and locations of the individuals and property under the Freedom of Information Act?

It is assumed from your inquiry that the state agency in question, unidentified in your letter, had authority to enter into such a lease. It is further assumed that such a lease would have been consummated in writing to comply with the Statute of Frauds. See Section 32-3-10, Code of Laws of South Carolina (1976).

A lease is defined as

a contract between the lessee and lessor, by which the lessor contracts to grant the possession and enjoyment of land or other hereditaments of a demisable nature for a period of years certain; and in most cases the lessee agrees to render to the lessor a rent in money or other kind of payment at the end of stated periods

Wilcox v. Bostick, 57 S.C. 151, 154, 35 S.E. 496 (1900) (emphasis added). The Supreme Court has thus declared that a lease is a form of contract.

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In this regard, the following from the Freedom of Information Act, Section 30-4-10 et seq. of the Code, is applicable; Section 30-4-50 provides:

Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of §§ 30-4-20, 30-4-40 and 30-4-70 of this chapter:

....

(6) Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;

....

(Emphasis added.) While this Office does not know which state agency is referenced, the definition of "public body" in Section 30-4-20 (a) includes

any department of the State, any state board, commission, agency and authority

Thus, it appears likely that such a contract as a lease entered into by a state agency would generally be disclosable under Section 30-4-50 of the Code.

Certain limitations must also be considered, as provided in Section 30-4-50. Section 30-4-40 specifies those matters which may be exempted from disclosure; (a)(5) permits exclusion of documents incidental to proposed contractual arrangements, for example. Section 30-4-70 provides for a public body to meet in executive session for any of several specific reasons; among them is to hold discussions of "negotiations incident to proposed contractual arrangements" See Section 30-4-70(a)(2). Section 30-4-20(c), within the definition of public records, provides a mechanism for exclusion of certain records from the public domain. Because we do not know the exact nature of the lease or contract, we cannot advise as to the applicability of one or more of the excluding statutes. Even if a particular exemption is applicable, of course, the public body has the discretion to release the document. See Op. Atty. Gen. dated May 13, 1986; Tobin v. Michigan Civil Service Commission, 416 Mich. 661, 331 N.W.2d 184 (1982).

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This Office has issued several opinions on various contractual matters; we are enclosing copies of opinions dated March 15, 1983; February 4, 1983; and January 6, 1982, which will demonstrate how such matters have been considered under the Freedom of Information Act.

We hope that the foregoing has satisfactorily responded to your inquiry. Because this Office would be in the position of advising a state agency should a Freedom of Information Act request be received by it, this Office may only provide the foregoing general comments as to applicable law in response to your letter.

With kindest regards, I am


Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions