The State of South Carolina

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October 30, 1985

Frank B. Sanders, Executive Director
South Carolina Department of
Parole and Community Corrections
Post Office Box 50666
Columbia, South Carolina 29250

Dear Mr. Sanders:

By your letter of July 16, 1985, you have asked for the opinion of the Attorney General on the following questions:

1. Whether the meetings of the South Carolina Department of Parole and Community Corrections ("Parole Board") constitute "meetings" by a "public body" under the Freedom of Information Act?

2. If so, whether the Parole Board may move into executive session to discuss or deliberate on matters relating to pardons and paroles?

3. Whether the votes of individual members must be disclosed?

Each of your questions will be discussed separately, as follows.

Question 1

The Parole Board was organized pursuant to Section 24-21-10 et seq., Code of Laws of South Carolina (1984 Cum. Supp.), to supervise offenders on parole, probation, or furlough; to grant pardons and paroles; and to operate community-based correctional programs. See Section 24-21-13. The Parole Board receives and expends public funds, see Part I, Section 56 of Act No. 201 of

REQUEST LETTER

1985, and thus would be within the definition of "public body," which term includes

> any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of this State, ... or any organization, corporation or agency supported in whole or in part by public funds or expending public funds ... .

Section 30-4-20(a) of the Code. Other jurisdictions have determined that the jurisdiction's equivalent of our Parole Board would be a public body subject to "sunshine" or freedom of information laws. See, for example, Florida Parole and Probation Commission v. Thomas, 364 So.2d 480 (Fla. Ct. App. 1978); Cummings v. Regan, 76 Misc.2d 137, aff'd. 45 App. Div. 2d 222 (1974); Nevada Op. Atty. Gen. No. 232, 1965; Missouri Op. Atty. Gen. No. 32-83, 1983; and Tennessee 8 Op. Atty. Gen. 275, 1978. We would similarly conclude that the Parole Board would be a "public body" and thus subject to this State's Freedom of Information laws, Section 30-4-10 et seq.

The Act further defines a "meeting" in Section 30-4-20(d) as

> the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

This Code section and definition were discussed extensively in Op. Atty. Gen. No. 83-55, a copy of which is enclosed. Thus, the Act would apply to meetings of a quorum of the Parole Board.

We also point out that by Section 24-21-30, the chairman of the Parole Board may direct the members to meet in three-member panels to carry out the Parole Board's responsibilities. The Act would most likely also apply to these panel meetings even though a quorum would not be present, since a "panel," as a "committee," would also be supported in whole or in part by public funds, see Op. Atty. Gen. No. 83-39, enclosed, and especially since a panel may speak for the entire Board by a unanimous vote on a particular matter. See also Ops. Atty. Gen. No. 84-125, dated October 26, 1984 and also July 28, 1983.

In conclusion, the Parole Board would be a "public body," the meetings of which would be subject to the terms of the Freedom of Information Act.

Question 2

The first question having been affirmatively answered, you then asked whether the Parole Board may convene in executive session to conduct its discussions or deliberations on pardons or paroles. This same question was answered recently in an opinion dated October 2, 1985, relying on an earlier opinion dated February 8, 1979. Copies are enclosed for your use.

In the February 8, 1979 opinion, whether "a State regulatory agency which has adjudicatory responsibilities pursuant to statute, may meet in executive session to deliberate on matters presented as evidence in public proceedings before it, consistent with the provisions of the ... Freedom of Information Act" was discussed. That opinion concluded that the Act does not "permit a state regulatory agency to go into executive session for the purpose of deliberating on matters of public record. The agency may, of course, go into executive session for the purposes outlined in Section [30-4-70]."

The reasons for which an executive session may be held are listed in Section 30-4-70 (a) (1-4) and include:

> (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; provided, however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.
>
> (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

> (3) Discussion regarding the development of security personnel or devices.
>
> (4) Investigative proceedings regarding allegations of criminal misconduct.

The opinions of October 2, 1985 and February 8, 1979, with authority cited therein, appear to be applicable to your second question. Of course, a public body may go into executive session for one of the reasons outlined in Section 30-4-70 (a), but these exceptions to the open meeting law are to be narrowly construed. Op. Atty. Gen. No. 83-55.

Question 3

You have also asked whether the votes of individual members must be disclosed. This question is answered in part by Section 30-4-90 (a)(3):

> All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to: ...
>
> (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken. ...

This Code section was discussed in Op. Atty. Gen. No. 84-4, which concludes that

> secret ballots may be used; but if a member of council asks that a vote be recorded, then a secret ballot could not be used in that instance. Further, ... if votes taken by secret ballot should be recorded by name, then such votes would become a matter of public record subject to disclosure, after the votes are submitted and tabulated.

A copy of this opinion and Opinion No. 77-279, cited in Opinion No. 84-4, are enclosed for your use.

We trust that the foregoing discussion and several opinions enclosed herein will be useful as the Parole Board drafts its

policies and procedures. Please advise if additional information or clarification should be needed.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions