

1981 WL 158077 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1981

***1 Re: South Carolina Freedom of Information Act—Confidentiality of Executive Sessions**

Senator Ryan C. Shealy
P. O. Box 142
Columbia, SC 29202

Dear Senator Shealy:

Your letter of December 11, 1981, has been referred to me. Your letter poses four questions concerning the confidentiality of executive sessions.

Your first question asks whether or not it is a violation of the confidentiality of the executive session to tell the number of votes for a candidate and also who voted and how their vote was cast. The South Carolina Freedom of Information Act, Section 30-4-70(a)(5), requires that any formal action taken in an executive session be ratified in public session before such action can be effective. 'Formal action' is defined as being 'a recorded vote committing the body concerned to a specific course of action'. In an earlier Attorney General's Opinion dated September 8, 1977, which is enclosed, this office determined that 'the vote of a member, like his comments and notes, made in executive session, should be exempt from public disclosure. The only statute requirement necessary to validate the action taken, or vote recorded, in executive session is to publicly ratify such action or vote. Such ratification should come through a motion to confirm the action taken in executive session If the motion to ratify is passed, the executive session action becomes binding There is no requirement that the executive session vote be made public.' However, there is nothing to prevent a public body holding a closed meeting from making whatever occurred in that meeting public.

Your second question deals with whether or not one would be free to discuss other matters occurring in executive session once the confidentiality of the executive session is destroyed. This is an ethical question which is not addressed by the South Carolina Freedom of Information Act. While the public body might be at liberty to disclose what occurred during an executive session, I do not feel that individual members of the public body would be free to discuss matters occurring during a closed meeting without the concurrence of the public body.

Your third question asks whether or not a vote taken in executive session must be retaken in public. Section 30-4-70(a)(5) of the South Carolina Freedom of Information Act requires that a formal action taken in executive session must be ratified in public before such action may become effective. This requires a recorded vote in public. As I indicated above, the earlier opinion of this office has held that ratification may come through a motion to confirm whatever formal action was taken in the executive session.

Your fourth question asks whether or not a member who participated in an executive session is free to reveal the nomination process and voting of members whose votes have not been publicized when another member who participated in the executive session reveals to the press how certain members voted. Again, I consider this an ethical question which is not specifically addressed by the Act, but I do not feel that any individual member of a public body should be free to violate the confidentiality of the executive session. Once this breach has occurred, however, while outside sources and third parties might have access to the minutes of the executive session, I do not believe that the members, without joint concurrence, should proceed individually to make public the discussions and actions taken in executive session.

*2 I hope that this is of assistance to you. Please do not hesitate to call on me if I may be of further aid to you.
Sincerely,

Judith Evans Finuf
Assistant Attorney General

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