

1976 WL 30484 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 A memorandum written by a Social Services employee to a county social services board, containing materials which are suitable for discussion by the agency in executive session, is not discoverable under the South Carolina Freedom of Information Act.

Dr. R. Archie Ellis
Commissioner
South Carolina Department of Social Services

SUBJECT:

Does the South Carolina Freedom of Information Act require the public disclosure of a memorandum written as an administrative briefing for a County Social Services Board?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Section 1-20 et seq.;

Cooper, et al. v. Richland County School District One, et al., Memorandum of Opinion and Order, filed January 23, 1976, Richland County Court of Common Pleas.

DISCUSSION OF ISSUES:

The question has been presented as to whether or not the South Carolina Freedom of Information Act, Code Section 1-20.1 et seq., would require public disclosure of a memorandum written by a high-level Department of Social Services employee and intended as an administrative briefing for a county board of social services. The subject matter of this memorandum includes personnel procedures such as employment, compensation, promotion, demotion or release of an employee. The memo is in effect a critique of a county welfare system, documenting certain allegations which will require action by the county board.

The South Carolina Freedom of Information Act, supra, deals with both access to public records and to public meetings. These two sections of the Act, 1-20.2 and 1-20.3, have been held by the Court to have been intended to be read together. See Cooper, et al. v. Richland County School District One, et al., supra.

In the Cooper case, former Chief Justice of the South Carolina Supreme Court, Joseph R. Moss, now currently a Special Circuit Judge in Richland County, held that these sections must be construed together because ‘. . . Common sense as well as proper rules of statutory construction require it.’

Therefore, if a particular document contains matters of personnel, such as possible job eliminations, reassignment of positions or salary calculations, all of which are appropriate for executive session under Section 1-20.3 of the Act, then such document is not discoverable under the Act.

It should be pointed out that the Cooper case, and Judge Moss's interpretations of the Freedom of Information Act are under appeal to the South Carolina Supreme Court. Nevertheless, Judge Moss's Order, is, in my opinion, the most lucid judicial interpretation of the Act currently available.

CONCLUSION:

A memorandum written by a Social Services employee to a county social services board, containing materials which are suitable for discussion by the agency in executive session, is not discoverable under the South Carolina Freedom of Information Act.

George C. Beighley
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