



ALAN WILSON
ATTORNEY GENERAL

November 15, 2019

The Honorable David R. Hiott
Member
South Carolina House of Representatives
P.O. Box 997
Pickens, South Carolina

Dear Representative Hiott:

We received your letter requesting an opinion regarding the South Carolina Freedom of Information Act ("FOIA"). In your letter, you informed us that

Pickens County Council formed the Hagood Mill Foundation (HMF) as a 501(c)(3) to oversee the Hagood Mill Historic Site (Site) in Pickens County. Pickens County Council approves members of HMF's Board and appropriates money from the Pickens County Budget to fund HMF. Pickens County owns the Site and possesses the authority to dissolve HMF.

As such, you request an opinion "as to whether HMF would qualify as a public body under FOIA's definitions and whether HMF must comply with relevant South Carolina Code Sections contained in FOIA such as 30-4-30 and 30-4-50."

Law/Analysis

"The essential purpose of FOIA is to protect the public from secret government activity." Lambries v. Saluda Cty. Council, 409 S.C. 1, 8-9, 760 S.E.2d 785, 789 (2014). The Legislature, in declaring the purpose of FOIA, stated

it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (2007).

Section 30-4-20(a) of the South Carolina Code (2007) defines “public body” for purposes of FOIA as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

(emphasis added).

In Weston v. Carolina Research and Development Foundation, 303 S.C. 398, 401 S.E.2d 161 (1991), the South Carolina Supreme Court considered whether the Carolina Research and Development Foundation (the “Foundation”) was a public body under this definition. The Court considered the Foundation’s argument that it was a private corporation and therefore FOIA did not apply. Id. at 403, 401 S.E.2d at 164. However, the Court declared “the unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body.” Id. The Court then clarified

this decision does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis. In that situation, there is an exchange of money for identifiable goods or services and access to the public body’s records would show how the money was spent. However, when a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

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Id. at 404, 401 S.E.2d at 165. “If public bodies were not subject to the FOIA, governmental bodies could subvert the FOIA by funneling State funds to nonprofit corporations so that those corporations could act, outside the public’s view, as proxies for the State.” Disabato v. S.C. Ass’n of Sch. Adm’rs, 404 S.C. 433, 455, 746 S.E.2d 329, 340 (2013).

Citing to Weston, this Office stated “the Weston Court made it clear that for purposes of whether or not an entity is a ‘public body’ under FOIA, the fact that the entity or organization may be characterized as ‘private’ is not controlling. Instead, the question is simply one of whether or not the entity or organization is ‘supported in whole or in part by public funds or [is] expending public funds.’” Op. Att’y Gen., 2006 WL 1574910 (S.C.A.G. May 19, 2006) (quoting Weston, 303 S.C. at 403, 401 S.E.2d at 164). See also, Op. Att’y Gen., 2014 WL 1398594 (S.C.A.G. Mar. 12, 2014).

While HMF is organized as a nonprofit corporation, you indicated it receives funds from Pickens County. In addition, you give no indication that Pickens County receives anything in return for these funds. Likewise, HMF likely expends public funds. Accordingly, we are of the opinion that HMF is a public body for purposes of FOIA and therefore, would be subject to the provisions of FOIA.

Conclusion

Based on the fact that HMF receives public funds, we are of the opinion that it is a public body under section 30-4-20(a) of the South Carolina Code and therefore, is subject to FOIA.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General