

The State of South Carolina

OS-4216
LIBRARY



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 7, 1991

George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

By your letter of February 1, 1991, you have asked that this Office clarify two points raised in our opinion to the Legislative Audit Council dated January 18, 1991.

At the bottom of page two of that opinion (and top of page three), two paragraphs are quoted from an earlier opinion dated June 24, 1981, as to whether revealing information gathered during a sunset review, as described therein, would constitute public disclosure. You have asked whether this Office would reach the same conclusion as to a similar disclosure of information gathered during a compliance review conducted pursuant to S.C. Code Ann. § 1-22-10 et seq. (1990 Cum. Supp.).

The statutes upon which the June 24, 1981, opinion was based include § 2-15-62 ("In the performance of their audit duties, Legislative Audit Council staff members are subject to the statutory provisions and penalties regarding confidentiality of records of the agency under review.") and § 2-15-120 ("All records of the ... Legislative Audit Council with the exception of ... its final audit reports provided for by § 2-15-60 shall be confidential and not subject to public disclosure prior to the publication of the final audit report...."). These statutes pertain specifically to sunset reviews. As to compliance reviews and other investigations which the Legislative Audit Council by statute is authorized or required to undertake, similar statutes are found at § 1-22-70 ("In the performance of their compliance review duties, the committee and the commission staff are subject to the statutory provisions and penalties regarding the confidentiality of records of the agency under review.") and § 1-22-60 ("All records of the committee, commission

Mr. Schroeder
Page 2
March 7, 1991

staff, and the council, with the exception of the Preliminary and Final Compliance Review Reports provided for in Section 1-22-120 and 1-22-160, are confidential and must not be disclosed to the public.").

As indicated in the opinion of June 24, 1981, the limited provision of information to individual legislators or legislative committees could be accomplished without such being a public disclosure, as further discussed in the opinion of January 18, 1991, whether the information be from a sunset review or a compliance review. Such legislators or legislative committees must be made aware of the statutes concerning confidentiality cited in the preceding paragraph. Should the legislator or committee publicly disclose any information obtained from the Legislative Audit Council, he or they should be aware of the potential for violation of §§ 1-22-70 and/or 1-22-60. Thus, we would reach the same conclusion expressed in the June 24, 1981, opinion as to compliance review records and public disclosure prohibitions and limitations.

You have further asked whether disclosure of compliance review records by the Legislative Audit Council pursuant to an order of a court would sufficiently protect a person involved from being in violation of the confidentiality statutes relative to compliance reviews. We concluded that a court order would so protect a person from being in violation of § 2-15-120 if a court directed the disclosure of sunset review or other records covered by § 2-15-120.

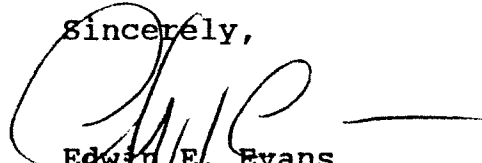
We note that § 2-15-120 specifically contemplates that a court might become involved in the issue of disclosure, whereas § 1-22-60 does not mention a court's determination that disclosure would be appropriate as to compliance review records. Nevertheless, we feel that an order of a court which appears to be valid on its face would sufficiently protect an employee who might be ordered to disclose compliance review records or otherwise face a citation for contempt of court for noncompliance. Cf., Kaneshiro v. Au, 690 P.2d 1304 (Hawaii 1984). We believe the court would have the inherent authority to make the determination that disclosure would be appropriate under the circumstances presented to it, balancing the requesting party's need for the information and the public interest in protecting the confidentiality of the information. Cf., Henneman v. City of Toledo, 35 Ohio St. 3d 241, 520 N.E.2d 207 (1988). The purpose of the confidentiality statutes would be to prohibit voluntary disclosure, not to impede justice or infringe substantive rights in an appropriate situation. Cf., State ex rel. Von Hoffman Press, Inc. v. Saitz, 607 S.W.2d 219 (Mo. App. 1980). Thus, we

Mr. Schroeder
Page 3
March 7, 1991

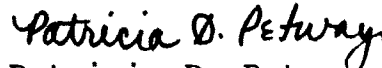
would conclude that a court order requiring disclosure of information in audits which are subject to the Compliance Review Act would sufficiently protect the person involved from being in violation of § 1-22-60.

With kindest regards,

Sincerely,



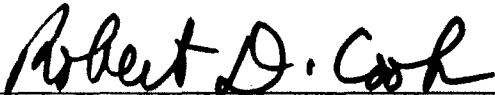
Edwin E. Evans
Chief Deputy Attorney General



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions