

1981 WL 157832 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 24, 1981

***1 Re: Mr. Schroeder's letter of June 2, 1981 and Mr. Gross' letter of June 15, 1981**

Mr. Philip G. Gross, Jr.
Director
State Reorganization Commission
228 Solomon Blatt Building
1105 Pendleton Street
Columbia, SC 29201

Mr. George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Gentlemen:

By the above-referenced letters, you have asked for the opinion of this Office concerning the effects, if any, on your agencies' activities of new [South Carolina Code § 2-15-120](#), which became law on April 13, 1981. This new section, in essence, makes criminal the 'public disclosure' of a 'record' of the State Reorganization Commission and/or the Legislative Audit Council, with the exception of its final review and evaluation reports and its final audit reports respectively.

It is the opinion of this Office that it would not be a public disclosure as prohibited by [§ 2-15-120](#) to provide a confidential viewing and/or explanation to those legislators requesting same or those agency-under-audit personnel of draft reports, preliminary audit reports, or study reports, provided that those to whom such a viewing or explanation is given understand that they are subject to [§ 2-15-120](#) and could be liable for any subsequent public disclosure of the information seen or heard. It is the opinion of this Office that it would not be a violation of [§ 2-15-120](#) for your Commission or Council, respectively, to perform properly those duties for which each was established by the legislature.

We would strongly suggest that those persons outside of your immediate staffs, who are given access to any of the above information, be requested to sign a form essentially like that included with this letter as Attachment A. This would be done both in aid of establishing your position that no public disclosure occurred during the course of your agencies' normal activities and to alert all concerned to the possibility of criminal liability for any subsequent disclosure by them.

To address the questions posed by Mr. Schroeder by number:

1 (a) The Council can provide verbal briefings to legislators prior to the release of a final report as outlined above, but it should be noted that such verbal briefings might possibly constitute 'records' if they describe precisely the actual contents of working papers in the possession of the Council;

1 (b) The presence or absence of legislative staff members would not alter either what is a 'record' or the fact that disclosure to legislators and their staff persons is not 'public' in the sense of the new section. Such staff members should be requested to sign an affidavit similar to Attachment A, of course.

1 (c) See 1(a).

2 (a) & (b) In the event a subpoena duces tecum is served on the Audit Council prior to the publication of a final audit report, you should immediately contact this Office so that we may discuss the feasibility of entering a motion to quash the subpoena based on the position that a subpoena cannot require an act that would be criminal. If that motion were to be denied, the effect would be a court order that you disclose the information sought, and it is the opinion of this Office that that would sufficiently protect the person involved from being deemed in violation of § 2-15-120.

*2 3(a) The Audit Council can continue to provide factual information to the Office of the Attorney General of South Carolina and Solicitors' offices, State, Law Enforcement Division, State Auditor's Office, State Budget and Control Board, State Comptroller General and the United States Department of Justice, Federal Bureau of Investigation, and the U. S. General Accounting Office, provided, however, that such disclosure should be made in total confidence and with the understanding by the agency to whom disclosure is made that subsequent public disclosure might be a violation of § 2-15-120 by that agency.

4 (a) & (b) Testimony given at a public hearing prior to publication of an audit report should not disclose in any fashion the contents of any record of the State Reorganization Commission or the Legislative Audit Council. After the audit report has been published, testimony other than verbatim reading from the audit report may well be a violation of the law if such is done publicly and discloses the contents of a record.

5 (a) The present Audit Council procedure for exit conferences does not appear to violate § 2-15-120 because it would not be a public disclosure of any of the information disclosed. However, the persons involved in the agencies participating in the exit conference should be requested to sign a form similar to Attachment A so that they will be aware that any subsequent public disclosure by them could well make them liable criminally.

6 (a) Disclosure by the Legislative Audit Council of information requested by an individual legislator or committee can be made in confidence to that individual or committee making the request. The issue of subsequent public disclosure by that legislator or members of that committee does not directly affect the Legislative Audit Council but the individual or committee receiving the information should be made aware that the possibility of a violation of § 2-15-120 exists if that individual or committee publicly discloses the contents of any record of the Legislative Audit Council.

If we may be of any further help to you on this matter, please feel free to call us.

Sincerely,

William P. Simpson
Assistant Attorney General
Judith Evans Finuf
Assistant Attorney General

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