

1980 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-14, 1980 WL 81898

Office of the Attorney General

State of South Carolina

Opinion No. 80-14

February 4, 1980

***1 Re: Legality of reapportionment issues being discussed in executive session of the South Carolina Senate**

The Honorable Tom Turnipseed
Member
South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Turnipseed:

Thank you for your letter of January 31, 1980, reading as follows:

‘I hereby request your official opinion as Attorney General of the State of South Carolina on whether or not it is legal under the South Carolina Freedom of Information Act for the South Carolina Senate to meet in executive session and discuss tactics to be used to avoid the reapportioning of the State Senate.’

In my opinion, the decision of what will be discussed during an executive session of either House rests in the judgment of that House as to whether secrecy is required, and the determination of the legislative body will not be interfered with by judicial action. The governing provision of the Constitution of this State is Article III, Section 23, which provides:

‘The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.’

See, also, Rule 33 of the Rules of the Senate, which provides, in essential part:

‘When acting on confidential or executive business the Senate shall be cleared of all persons except the President, the Senators, the Clerk of the Senate and the Sergeant-at-Arms of the Senate.’

There appear to be no cases in this or other jurisdictions which have arisen under this or similar provisions of Constitutions of other states and there also appears to be a lack of text authority upon any issue that may have arisen in this connection in any jurisdiction. This indicates to me the apparent total absence of any contentions arising by virtue of the application of such a constitutional enactment.

The Freedom of Information Act recognizes the paramountcy of legislative control over executive sessions. [Section 30-4-40\(e\), 1976 Code](#) of Laws, provides:

‘Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.’

I advise that actions by the Senate in executive sessions on issues concerning reapportionment of the Senate may legally be discussed in executive sessions of the Senate.

With best wishes,

Cordially,

Daniel R. McLeod
Attorney General

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