

1980 WL 120958 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 3, 1980

**\*1 Re: The Drug Formulary Advisory Committee**

Mr. H. Parker Evatt  
Second Vice-Chairman  
Medical, Military, Public and Municipal Affairs Committee  
House of Representatives  
P. O. Box 11867  
Columbia, SC 29211

Dear Mr. Evatt:

The primary question to be addressed in order to determine whether or not a committee is subject to the Freedom of Information Act is whether or not that body is a 'public body' pursuant to [Section 30-4-20 of the South Carolina Code of Laws, 1976](#). This statutory section defines a 'public body' as being:

'Public body' means any department of the State, 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 and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

If an organization is determined to be a 'public body' within the meaning of the act, then any meeting held by that body so long as it is a convening of a quorum of the constituent membership must be opened to the public unless the topic of the meeting fits within one of the statutory exceptions as defined in [Section 30-4-70, South Carolina Code of Laws, 1976](#). In your letter, you have indicated that the members of the Drug Formulary Advisory Committee are reimbursed for mileage and are paid a per diem. As this organization is supported by public funds in that its members receive direct reimbursement on a per diem basis, then this committee comes within the definition of a 'public body' within the meaning of the act.

A meeting is defined under [Section 30-4-20\(d\)](#) as being a convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. Quorum is defined to be a simple majority of the constituent membership of the public body unless otherwise defined by applicable law. [Section 30-4-70, South Carolina Code of Laws, 1976](#), defines when meetings may be closed. A meeting may be closed for the following reasons:

1. The discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; provided, however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

2. Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

**\*2** 3. Discussion regarding the development of security personnel or devices.

4. Investigative proceedings regarding allegations of criminal misconduct.

5. Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings; provided, that no budgetary matters shall be discussed in such closed session except as otherwise provided by law. Such reasons and the votes of the members shall be recorded and be matters of public record. No regular or general practice or pattern of holding closed meetings shall be permitted.

Also enclosed please find two prior opinions of this office dealing with Advisory Committees or councils. The Governor's 'Solar Energy Advisory Council', was held by this office not to be a public body on the basis that its members met on their own time and received no reimbursement of any kind by the State. Such is not the case here. In the opinion concerning the 'Blue Ribbon Committee', an Advisory Committee to the Aiken County School Board, the committee was held not to be a public body, although it did occasionally receive lunches or suppers at the schools during school briefings, but it was pointed out that this matter was not free from doubt as the definition within the statute as to what constitutes being 'supported in whole or in part by public funds' has yet to be determined by the courts of this State.

In conclusion, based upon the fact that the committee members receive reimbursement for mileage and a per diem payment, it is the opinion of this office that the 'Drug Formulary Advisory Committee' is a public body within the meaning of the Freedom of Information Act.

Sincerely,

Judith Evans Finuf  
Assistant Attorney General

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