

1980 S.C. Op. Atty. Gen. 128 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-78, 1980 WL 81960

Office of the Attorney General

State of South Carolina

Opinion No. 80-78

July 7, 1980

**\*1 SUBJECT: The availability under the Freedom of Information Act of details and discussions originated in a valid closed session.**

The contents of discussions originating in a valid closed session are not subject to disclosure under the Freedom of Information Act.

TO: G. Robert George  
Chairman  
James Island Public Service  
Commission

QUESTION:

Does the South Carolina Freedom of Information Act allow for or require the disclosure of the details of an action taken in a valid closed session entered into under § 30-4-70 after the action is publicly ratified as required by § 30-4-70(a)(5)? Does the Freedom of Information Act super-cede Section 9 of Robert's Rules of Order?

STATUTES:

§ 30-4-30, § 30-4-40(a)(5), §30-4-50(7), § 30-4-70(a)(2), § 30-4-70(a)(5).

FACTS:

The facts as alleged are that in a regular meeting on April 28, 1980, the James Island Public Service Commission voted to hold I meeting closed to the public to discuss a proposed purchase of a privately owned waste water treatment facility. The Commission voted in executive session to authorize the negotiation of the purchase within a specific monetary limit. The Commission then went into public session and ratified the formal action, that is, the authorization to negotiate the purchase but omitting the monetary limitation set on the purchase price. A Commission member thereafter disclosed to third parties the monetary limit of the authority of the Commission purchase agent. The question has arisen as to whether or not this monetary limit was information subject to disclosure under the Freedom of Information Act.

DISCUSSION:

The Freedom of Information Act, [§ 30-4-30 of the South Carolina Code of Laws](#) (1976) gives to any person the right to copy or inspect any public record of a public body except as otherwise provided by § 30-4-40. That Code Section, however, lists matters exempt from disclosure. § 30-4-40(a)(5) exempts from disclosure 'Documents incidental to proposed contractual arrangements and proposed sale or purchase of property. [§ 30-4-70\(a\)\(2\) of the South Carolina Code of Laws](#) (1976) allows a public body to hold a closed meeting for the discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property . . . ' [§ 30-4-70\(a\)\(5\)](#) requires that 'Any formal action taken in executive session be thereafter ratified in

public session prior to such action becoming effective. As used in this Item 'formal action' means a recorded vote committing the body concerned to a specific course of action.' The recorded vote was so ratified.

The Freedom of Information Act was designed so as to protect certain specified areas from public scrutiny. The proposed purchase of property is such an area. Documentation and discussion relating to such a proposed purchase are both protected areas. The minutes of meetings concerning a proposed purchase which are closed to the public by a public vote are specifically declared not to be public information under § 30-4-50(7) of the [South Carolina Code of Laws](#) (1976). Therefore, details of discussion during a closed session concerning a proposed purchase are not subject to disclosure under the Freedom of Information Act. The Public Body could, of course, vote to make certain details public at their discretion but this disclosure should, of course, be by a majority vote and not by the action of an individual commission member. The South Carolina Freedom of Information Act does not supercede Section 9 of Robert's Rules of Order insofar as those rules provide that the proceedings of a meeting held in executive session are secret . . . so long as the executive session is valid under § 30-4-70 and statutory procedures defined therein are followed.

CONCLUSION:

\*2 The details of discussion concerning the proposed purchase of property originating in a valid executive session, specifically the price range and monetary limitations within which negotiations for purchase must be maintained, are not matters of public record subject to mandatory disclosure under the South Carolina Freedom of Information Act. Further, the South Carolina Freedom of Information Act does not supercede Section 9 of Robert's Rules of Order insofar as it provides that the proceedings of meetings held in executive session are secret, such Rules having been adopted by James Island Public Service Commission.

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