

1977 S.C. Op. Atty. Gen. 214 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-279, 1977 WL 24619

Office of the Attorney General

State of South Carolina

Opinion No. 77-279

September 8, 1977

\*1 1) Does the Freedom of Information Act require disclosure of how each school board member voted in executive session?

2) Does the Freedom of Information Act require the disclosure of how each school board member voted in a public session, to elect officers, or may secret written ballots be used and only the totals made public?

TO: E. P. Riley

Attorney

Greenville County School District

STATUTES, CASES, ETC:

Code of Laws of South Carolina (1976), Section 30–3–10, et seq.;

Roberts Rules of Order, Section 45, page 468 (1970).

DISCUSSION OF ISSUES:

The first question you raise concerns the propriety of not disclosing how individual trustees voted in an executive session, when such vote is later ratified in public session.

There is no question that the State's Freedom of Information Act (FOIA), Code Section 30–3–10 et seq., provides for executive sessions to discuss or consider employment, appointment, compensation, promotion, demotion, discipline or release of an employee.

The FOIA was amended in 1976 to require that boards and agencies vote in public on the decision to go into executive sessions, and when such vote is favorable the presiding officer must announce the purpose of the executive session. Any 'formal action,' meaning a recorded vote committing the agency to a specific course of action, must be ratified in public session before it is effective.

After an executive session, the materials considered therein, and discussions held therein are not subject to public disclosure in any form. See, Cooper, et al. v. Bales, et al., Op. No. 20387, filed March 17, 1977 by the South Carolina Supreme Court.

The vote of a member, like his comments and notes, made in executive session, should be exempt from public disclosure. The only statutory requirement necessary to validate the action taken, or vote recorded, in executive session is to publicly ratify such action or vote. Such ratification should come through a motion to confirm the action taken in executive session; i.e., adopting the principal's recommendation to terminate two coaches. If the motion to ratify is passed, the executive session action becomes binding. Such ratification is a condition precedent to the validity of the executive session action. There is no requirement that the executive session vote be made public. In fact, the Supreme Court has indicated such vote as part of the proceeding in executive session, does not have to be made public.

II.

The second question you raise concerns the ability of a school board to vote by secret ballot in a public session to elect officers for the board.

An examination of the standard research sources has produced no case law or general statement of the law on this point. The closest language appears in Roberts Rules of Order, Section 45, page 368. (\_\_\_\_). This source states that the bylaws or rules of procedure for the particular organization should specify whether the vote should be taken by voice vote, show of hands, or ballot. Roberts indicates that in the absence of specific election procedures, any of the above mentioned methods would be acceptable.

\*2 Assuming, then, that it would be proper to vote for officers by secret ballot, there is a further question concerning the disclosure of any written evidence of the voting which may exist after the voting occurs.

Assistant Attorney General Karen L. Henderson has considered a similar question in a letter written February 26, 1975. Mrs. Henderson determined that the FOIA did not require a member of a county legislative delegation to disclose the contents of his ballot for county judge. However, Mrs. Henderson determined that any written record of the result of the vote would be subject to inspection and examination under the FOIA. See attached copy.

It therefore appears that the school board members' votes, should they be recorded by name, would become a public record subject to public disclosure, after the votes are submitted and tabulated.

CONCLUSION:

- 1) The FOIA does not require the disclosure of each member's vote on a question, taken in executive session.
- (2) The school board may elect officers in a public meeting by secret ballots, but any written record of the vote by name would be public information after the votes are tabulated.

George C. Beighley  
Assistant Attorney General

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