1979 WL 42702 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 8, 1979

***1 RE: Requested Attorney General's Opinion**

Mr. J. Wright Horton
Attorney at Law
Post Office Box 10167 FS
Greenville, South Carolina 29603

Dear Mr. Horton:
You have recently requested an opinion of this Office concerning the authority of the trustees of the School District of Greenville County, pursuant to South Carolina's Freedom of Information Act, to hold meetings closed to the public. More specifically, following such an 'executive session', what information must that public body provide concerning such an executive session?

As you are no doubt aware, the South Carolina General Assembly rewrote the Freedom of Information Act in 1978, enacting Act No. 593, Acts and Joint Resolutions of South Carolina, 1978. Therefore, all statutory references hereinafter will be to Act No. 593 of 1978 as it is codified in the Code of Laws of South Carolina, 1976, as amended. (1978 Cumm. Supp.). I am aware of no decisions of the South Carolina Supreme Court which have construed the new Freedom of Information Act; however, bearing in mind the likely differences in each state's statutes, you may find helpful an article entitled, 'Validity, Construction, and Application of Statutes Making Public Proceedings Open to the Public', 38 A.L.R. 3d 1070.

Section 30-4-70 provides that a public body, which includes school district boards of trustees, may hold meetings closed to the public for the reasons specified in that Code section. Section 30-4-70(a)(5) states:
Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be 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 'formal action' relates, of course, to a matter which was properly considered during executive session, and the scope of the ratification thereof during the following public session is dictated by the scope of such 'formal action'.

Therefore, the disclosure by way of ratification that a public body must make after an executive session will likely vary in each instance. For example, § 30-4-70(b) specifically authorizes closed meetings to receive an administrative briefing under certain circumstances, and § 30-4-30(a)(7) states, 'correspondence or work product of legal counsel for a public body and any other material that would violate attorney-client relationships.', are matters exempt from public disclosure. Obviously, the nature of details of the work product of legal counsel would not have to be disclosed following executive session, unless some 'formal action' was taken pursuant to such advice. Even if some 'formal action' were taken pursuant to the work product of legal counsel, only the ultimate decision, as opposed to administrative briefing, must be publicly disclosed. The Supreme Court had occasion to construe the former Freedom of Information Act in the case of Cooper v. Bales, 268 S.C. 270, 233 SE 2d 306 (1977), which case provides sound reasoning in interpretating the present act. In that case the Court pointed out that provisions restricting legal advice from public disclosure would be rendered meaningless

if the public body had to disclose the details of such advice following an executive session. It would seem that this same reasoning should apply in other areas in which the General Assembly has statutorily restricted public access or in areas in which public bodies are specifically authorized to go into executive session. By way of further illustration of this principle, if a public body determines to dismiss an employee during an executive session, it seems that the decision to dismiss would constitute the formal action, and that the dismissal, rather than the underlying basis, is the matter which must be ratified at the following public session.

*2 Without reference to a concrete factual situation, no hard and fast rules can be laid down to apply to every possible situation which might arise under the Freedom of Information Act. Therefore, the best policy would seem to be for a public body to ratify in public session formal action taken in an executive session which constitutes an ultimate or final decision on a matter of the public body. Conversely, should the public body take no formal action during executive session, then it seems reasonable that the only public statement which must be made at the following public session is that no formal action was taken concerning the matter for which the public body announced it was going into executive session. Finally, you will find enclosed copies of three previously issued opinions of this Office concerning the Act which you may find helpful.

I trust that this will provide you some assistance in rendering advice to your school district.

With kind regards,
Sincerely,

Paul S. League
Assistant Attorney General

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