

1975 WL 29106 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1975

*1 The State Employee Grievance Committee may enter into executive session on personnel matters pursuant to the Freedom of Information Act and is not required to release a transcript of the session absent lawful subpoena.

TO: Robert H. Stoudemire
Chairman
State Employees Grievance Committee

QUESTIONS PRESENTED

- (1) Whether the State Employee Grievance Committee must release a transcript taken during executive sessions to the State Human Affairs Commission for its investigation of a personnel matter in behalf of the Equal Employment Opportunity Commission.
- (2) Whether a transcript must be released to the attorney for an employee which brought the grievance.
- (3) Whether the employee's attorney should have the right to read the transcript in the State Personnel Office in order that he may contest any portions which he feels were not transcribed correctly.

STATUTES, CASES, ETC., INVOLVED

'Freedom of Information Act,' particularly § 1-20.3, Code of Laws of South Carolina.

'State Employee Grievance Act of 1974,' particularly § 1-49.16.

§ 709(e) of Title 7 of the Civil Rights Act of 1964, as amended by P.L. #92-261; The Equal Employment Opportunity Act of 1972.

[Sanders v. City of Fort Smith, 473 S.W.2d 182, Blum v. Board of Zoning and Appeals of the Town of North Hampstead, 149 N.Y.S.2d 5.](#)

DISCUSSION OF ISSUES

In this case there was a lengthy hearing before the State Employee Grievance Committee concerning promotion of an employee, which hearing was recorded for possible transcription. The hearing has ?? been transcribed and the employee's attorney has requested a copy of the transcript. It has long been the policy of the committee not to release the transcripts unless a court proceeding was contemplated and the transcript was subpoenaed. I understand that transcripts also have been made in case the State Budget and Control Board, which has the final decision in State employee grievances, desires to review the proceedings.

The statute establishing the Grievance Committee, referred to above, specifically states that

grievances may include but are not necessarily limited to classification, dismissal, suspensions, involuntary transfers, promotions and demotions.

The section of the Freedom of Information Act referred to above specifically refers to the following:

'Executive sessions shall be permitted only for the purpose of discussing or considering:

(1) employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, administrative briefings and committee reports;

(2) negotiations incident to proposed contractual arrangements and proposed sale of purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations;

(3) private matters presented by individuals or groups of citizens.'

(4) The consideration of certain other specifically designated matters.

*2 An 'executive session' has been defined as a session closed to the public, and at which only such selected persons as the Board may invite are permitted to be present. [Sanders v. City of Fort Smith](#), 473 S.W.2d 182, [Blum v. Board of Zoning and Appeals of the Town of North Hampstead](#), 149 N.Y.S.2d 5. The Committee has indicated its belief that the confidential nature of the proceedings encourages free speech by fellow employees in grievance matters and harmonious relations between public employers and employees. The Freedom of Information Act [Section 1-20.3(d)] makes provision that: 'committees and subcommittees of the General Assembly or any public agency, board or commission may, upon majority vote of its membership, conduct executive sessions.'

I am informed by Clay Gompf, Deputy Commissioner/General Counsel of the Human Affairs Commission, that any information obtained as a transcript, could not be released to the public under penalty of federal criminal sanctions. (Section 709(e) of Title 7 of the Civil Rights Act of 1964, as amended by P.L. #92-261, The Equal Employment Opportunity Act of 1972.) I am also informed by him that his agency could in a two-week period obtain a federal subpoena for the transcript.

CONCLUSION

Reading the statutes together, it appears that the Committee may enter into executive session because this matter concerns a dispute over promotion, which is specifically referred to as a ground for entering executive session under the Freedom of Information Act. Any testimony would be confidential, and its release could only be authorized by the Committee, absent a lawful subpoena from a court or agency empowered to issue such subpoena. The authorized privacy of legitimate executive sessions would be defeated if a record of such executive session is made and disclosure is required. The decision to release a transcript should be based on the policy of the Committee in the furtherance of the purposes of the State Employee Grievance Procedure Act.

Further, as to allowing counsel to read the transcript in the State Personnel Office, there is no legal impediment to this, and it once again would be based upon the policy of the Committee.

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