

1974 S.C. Op. Atty. Gen. 309 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3880, 1974 WL 21378

Office of the Attorney General

State of South Carolina

Opinion No. 3880

November 1, 1974

***1 Private meetings by the Board of Trustees of a school district to discuss the business of the district should be avoided.**

Chairman

Board of Trustees

Cherokee County School District

Reference is made to your letter requesting the opinion of this office concerning procedures of the Board of Trustees of Cherokee County, School District No. 1. You advise as follows:

‘I find it both feasible and practical to privately discuss, with certain members of the Board, their viewpoints and ideas on matters which will be officially passed upon later in regular meetings. In my private discussions with one or more of these members, no matters are officially passed upon in our private discussions, no contracts are let, no tax monies are spent, and absolutely no binding conclusions are made in behalf of the school system or the taxpayers. I repeat, only official action is taken in the regular, open, and public meetings, with all such business being properly recorded in the minutes of the meetings. As the result of the comparing of viewpoints of members which I can call upon, or have visit with me in my home, I find that I can better prepare myself for the regular called meetings by having needed information available and to better develop the issues which will be presented or which might be upon the agenda.’

It is the continuation of this procedure to which the request for the opinion is made.

The Board of Trustees was created by Act 685, Acts of 1967, beginning at Section 26 of the permanent provisions of the Act. Section 29 provides in part that ‘The Board of Trustees shall hold regular meetings and special meetings as often as necessary. All regular meetings shall be open to the public. * * *.’ Subsequent to this Act, the General Assembly, in 1972, enacted the ‘Freedom of Information Act’ codified in Article 2.2 of Title 1, Sections 1–20, et seq. Section 1–20.1 defines as a ‘Public agency’ any public or governmental body * * * including counties * * *, school districts * * *. A ‘public meeting’ is defined by the Section to mean ‘the meetings of the governing body of any public agency.’ Section 1–20.3 provides in part that: ‘(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of each public agency of the State shall be open to the public. * * *.’

These sections contemplate the transaction of the District's business in meetings open to the public and private discussion with other board members in session other than those authorized would have the effect of negating the Act in spirit, if not actually in fact. The Act itself, in Section 1–20.3(b) specifically prohibits executive sessions for such purposes and provides ‘Executive sessions shall not be called for the purpose of defeating the reason or spirit of this Article.’

While the purpose and motives of these meetings are to better inform yourself and the other board members of the facts and issues to be considered in a formal meeting, the same may easily create doubt and concern about the Board's action.

***2** Our Supreme Court, in the case of *O'Shields v. Caldwell*, 207 S. C. 194, 35 S. E. 2d 184, favorably quoted from 43 Am. Jur. 77, 78 as follows:

‘The obligations of public officers as trustees for the public are established as a part of the common law, fixed by the habits and customs of the people. Among their obligations as recipients of a public trust are to perform the duties of their office honestly, faithfully and to the best of their ability * * * (and) to use reasonable skill and diligence * * *. Every public officer is bound to perform the duties of his office honestly, faithfully, and to the best of his ability, in such manner as to be above suspicion of irregularities, and to act primarily for the benefit of the public.’

It is the suspicion of irregularity that should be avoided, therefore, it is the opinion of this office that this procedure should be discontinued.

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