



ALAN WILSON
ATTORNEY GENERAL

March 30, 2020

Director Connie D. Munn
S.C. Department on Aging
1301 Gervais Street, Suite 350
Columbia, SC 29201

Dear Director Munn:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

The S.C. Department on Aging (“Department”) would like to request a formal opinion on whether meetings between the Department and their regional affiliates, the Area Agencies on Aging (“AAA”), constitute a “meeting” as defined by the S.C. Freedom of Information Act (S.C. FOIA), S.C. Code Ann. § 30-4-10 *et seq.*, and whether such meetings would require notification in accordance with § 30-4-80(E), if they are interpreted as meetings.

The Department is the designated State Unit on Aging for South Carolina under the federal Older Americans Act (“OAA”), 42 U.S.C. § 3001 *et seq.* The Department, in carrying out its mandate as the designated State Unit on Aging, develops and administers a multi-year state plan to advocate and provide supportive services to seniors, their families, and adults with disabilities. The Department works with ten AAA entities to carry out that plan on a regional level, and the AAA contracts with direct service providers across the state to meet those supportive needs.

The Department will meet with the ten AAA [entities] monthly to discuss the administration of the state plan. For each meeting, both Department and AAA staff put forward topics for the agenda which have included items such as funding, monitoring, federal and state reports, programmatic issues, etc.

Law/Analysis

It is this Office’s opinion that a court would likely hold a meeting between the Department and the area agencies on aging (“area agencies”) would constitute a meeting under the S.C. FOIA. See S.C. Code §§ 30-4-10, *et seq.* The S.C. FOIA requires that “[e]very meeting

of all public bodies shall be open to the public” except when closed to enter executive session for one of the statutorily listed reasons in Section 30-4-70. S.C. Code § 30-4-60. “A public body must provide advance notice of all meetings and keep written minutes which must include statutorily specified information. S.C. Code §§ 30-4-80, -90.” Disabato v. S.C. Ass'n of Sch. Adm'rs, 404 S.C. 433, 442–43, 746 S.E.2d 329, 334 (2013). “Public body” is defined as:

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions ...

S.C. Code Ann. § 30-4-20(a) (emphasis added). As emphasized above, the public body definition includes committees regardless of how they are designated. While the act does not further define committee, Black’s Law Dictionary defines a “committee” as “[a] subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action.” COMMITTEE, Black’s Law Dictionary (11th ed. 2019). The South Carolina Supreme Court emphasized that a committee that is established to give advice to a public body is itself considered a public body, even when no members of that public body are on the committee.

The fact that the City Manager, and not the City Council, created the Committee and no council member served on the Committee, is not enough to remove the Committee from the definition of “public body” as stated in FOIA. First, it does not matter that the members of the Committee are not members of the parent body. See 1984 S.C. Op Atty Gen., No. 84–281. Second, the Committee was set up to give advice to the City Manager, and ultimately the City Council. It is clear from the minutes of the City Council meeting and the testimony of Thomas Leath, City Manager, the Committee's selection process and recommendation went directly to the City Council.

Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 162, 547 S.E.2d 862, 865 (2001).

The next statutory definition necessary to this analysis is “meeting.” Meeting is defined as, “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. Code Ann. § 30-4-20(d). In Lambries v. Saluda County Council, 409 S.C. 1, 14-15, 760 S.E.2d 785, 792 (2014), the South Carolina Supreme Court explained that a meeting under the S.C. FOIA includes “deliberative gatherings” to receive information.

Under an open meetings law, a meeting is a gathering of a quorum or more members of a governing body at which members discuss, decide, or receive information as a group on issues relating to the official business of the body A meeting is not limited to gatherings at which action is taken by a governing body. Deliberative gatherings are included as well, and deliberation in this context connotes not only collective decision-making but also the collective acquisition and exchange of facts in preparation for the final decision.

(quoting 62 C.J.S. Municipal Corporations § 308 (2011)).

With this framework in mind, this opinion will next examine relevant portions of the OAA to determine whether a court would likely find a meeting between the Department and its area agencies would constitute a meeting under the S.C. FOIA. The OAA was enacted “to encourage and assist State agencies and area agencies on aging to concentrate resources in order to develop greater capacity and foster the development and implementation of comprehensive and coordinated systems to serve older individuals.” 42 U.S.C.A. § 3021. The OAA provides that states are eligible to receive grants if they implement the policies set forth in the act. See 42 U.S.C.A. § 3025. To be eligible for such grants, a state must establish a state agency to develop and administer a state plan. See 42 U.S.C.A. § 3025(a)(1). The state agency is primarily responsible for the planning, policy development, administration, coordination, priority setting, and evaluation of all state activities related to the act, and is also responsible for dividing the state into planning and service areas. Id. The state agency must also designate a public or private nonprofit agency or organization as the area agency for each service area. See 42 U.S.C.A. § 3025(a)(2)(A). The state agency is further directed to develop and publish a formula, in consultation with the area agencies, for the distribution of funds received under the act within the state. See 42 U.S.C.A. § 3025(a)(2)(C). Finally, the state plan must be based on the area plans developed by each of its area agencies. 42 U.S.C.A. § 3027(1).

South Carolina has designated the Department on Aging as its “state agency to implement and administer all programs of the federal government relating to the aging.” S.C. Code Ann. § 43-21-40. The Department is tasked with designating area agencies on aging which “represent the regional level of the state aging network.” S.C. Code Ann. § 43-21-45.

The Department is certainly a statutory public body because it is one of the listed departments within the executive branch of state government in Section 1-30-10. Moreover, because the OAA requires the Department to develop its formula for the distribution of funds received under the act in consultation with the area agencies (42 U.S.C. § 3025(a)(2)(C)) as well as developing the state plan based on the area plans submitted by the area agencies (42 U.S.C. § 3027(a)(1)), the area agencies would likely be considered a committee of the Department. See Quality Towing, Inc., 345 S.C. at 162 n.2, 547 S.E.2d at 865 n.2 (citing Wood v. Marston, 442 So.2d 934 (Fla.1983) (where committees are found to be one step, however remote, in the decision-making process, courts tend to require committees to open their meetings)). Therefore, the Department’s meetings with the area agencies would likely be considered meetings under the

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S.C. FOIA and the requirements for notice, recording of minutes, and to be open to the public would apply.

Conclusion

It is this Office's opinion that a court would likely hold a meeting between the Department and the area agencies on aging ("area agencies") would constitute a meeting under the S.C. FOIA. See S.C. Code §§ 30-4-10, *et seq.* Because the OAA requires the Department to develop its formula for the distribution of funds received under the act in consultation with the area agencies (42 U.S.C. § 3025(a)(2)(C)) as well as developing the state plan based on the area plans submitted by the area agencies (42 U.S.C. § 3027(a)(1)), the area agencies would likely be considered a committee of the Department. A committee of a public body is itself considered a public body under the S.C. FOIA. S.C. Code Ann. § 30-4-20(a). A quorum of the area agencies to discuss issues related to the OAA, an area over which they have advisory authority, would constitute a meeting under the S.C. FOIA. S.C. Code Ann. § 30-4-20(d). Therefore, it is this Office's opinion that the S.C. FOIA's requirements for notice, recording of minutes, and to be open to the public would apply to the Department's meetings with the area agencies. S.C. Code §§ 30-4-60, -80, -90.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General