

1973 WL 27766 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 21, 1973

*1 Hon. Melvin Z. Roberts
Mayor
City of York
P. O. Box 500
York, South Carolina 29745

Dear Mayor Roberts:

We shall respond to your inquiries in the order in which you presented them.

I. Re: Applicability of the Freedom of Information Act to both negotiations concerning real estate purchases and the actual purchase thereof by members of a city council meeting in executive session.

The Freedom of Information Act, 1972 (57) 2585, in Section 5(b)(2) expressly permits negotiations incident to proposed contractual arrangements and proposed sales or purchases of property to be heard in executive session. The Act neither allows nor forbids the actual consummation of the purchase transaction in such a session. Inasmuch as the agreement upon execution becomes a matter of public record, it would seem that such a procedure is not contrary to the intent of the act.

II. Does the purchase of land require the passage of a law, resolution or ordinance?

There are no Constitutional provisions or Code sections which require a city of York's size to utilize a specific form of action when purchasing property. By way of contrast, it should be noted that the General Assembly has provided that every act of a council operating under a council-manager form of government which involves the expenditure of funds or contracting of indebtedness must be in the form of an ordinance. Section 47-699.35, South Carolina Code of Laws (1962). Such ordinances must have three (3) readings. Section 47-699.36, *et seq.*, Arguably, requiring form or faction for one type of city government while remaining silent as to the actions of a mayor-council type leaves the latter cities free to choose their own methods of purchasing lands. There is no way to determine whether or not the City of York must purchase real estate by means of a law, a resolution, or an ordinance save a study of the requirements of that City's Code and the constructions given those requirements by local use. Section 2-41 standing alone sheds no light on the matter.

III. If an ordinance is required, would the motion duly made and passed during executive session count as one reading?

If an ordinance is required, then, presumably, Section 2-41 would operate to make two readings necessary. It would be consistent with that Section and not in conflict with the Freedom of Information Act to count the action of the council in executive session as the first reading.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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