

July 17, 2007

Cecilia Atkins, Clerk/Treasurer
Town of West Union
P. O. Box 129
West Union, South Carolina 29696

Dear Ms. Atkins:

In a letter to this office you referenced that on June 5, 2007 the West Union town council had scheduled a special meeting to discuss a particular matter. The agenda indicated that the meeting was scheduled to begin at 2:00 p.m. According to the attachments to your letter, notice of this special meeting was posted. However, an “emergency meeting” was held at 1:30 p.m. You have questioned whether such “emergency meeting” was “legal”.

S.C. Code Ann. § 30-4-80 states that

All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

(emphasis added). It is my understanding that there was no posted notice as required generally for meetings of public bodies for the 1:30 “emergency meeting” referenced above.

As referenced in an opinion of this office dated February 22, 1984, according to the preamble of this State’s Freedom of Information Act as codified at S.C. Code Ann. § 30-4-15, the General Assembly made the finding that:

Ms. Atkins
Page 2
July 17, 2007

... it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

As stated in an opinion of this office dated October 11, 1989, the Freedom of Information Act is a statute

...remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. See, S.C. Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exceptions to the Act's applicability must be narrowly or strictly construed. News and Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 223 S.E.2d 580 (N.C.1976).

The referenced February 22, 1984 opinion in noting that § 30-4-15 recognizes the importance of the public's ability to learn of the activities of their public officials stated that

... there must also be ample notice to the public of public meetings. For, it is generally recognized that if no steps are taken to make the public aware that a public meeting is taking place, the fact that the meeting is open is rendered "virtually meaningless." Bensalem Tp. Sch. Dist. v. Gigliotti Corp., (Pa.), 415 A.2d 123, 125 (1980). As the Pennsylvania Supreme Court stated in Consumers Education and Protection Assn. v. Nolan, 470 Pa. 372, 384, n. 4, 368 A.2d 675, 681, n. 4 (1977),

... adequate notice to the public at large is an integral part of the public-meeting concept; a meeting cannot be deemed to be public merely because its doors are opened to the public if the public is not properly informed of its time and place.

The opinion also states that the notice provisions of Section 30-4-80

...must be liberally construed to effectuate their clear legislative purpose, i.e. adequate notice to the public. And, without doubt, these notice requirements may not be simply ignored by the public body; they are mandatory...The section requires overt and affirmative action by the public body to fulfill the notice requirements.

As to the exemption for "emergency" meetings, the February 22, 1984 opinion further stated that

Ms. Atkins
Page 3
July 17, 2007

[o]nly 'emergency' meetings are exempted from the notice requirements stated above. Since no definition of 'emergency' is contained in the Act, the plain and ordinary meaning of the word must be deemed controlling. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The South Carolina Supreme Court has defined an 'emergency' as 'an unforeseen occurrence or combination of circumstances which call for immediate action or remedy; pressing necessity; exigency.' Hice v. Dobson Lumber Co., 180 S.C. 259, 269, 185 S.E. 742 (1935). This office has recently stated that any exception to the policy of open meetings must be narrowly construed. Op. Atty. Gen., August 8, 1983, supra. The same holds true for the notice requirements. Accordingly, the emergency must be real, and determined in light of the situation; simply the declaration of an emergency by a public body is not enough....

As indicated in numerous prior opinions, this office does not have the jurisdiction of a court to investigate and determine facts. See, e.g. Ops. dated March 20, 2007 and October 9, 2006. Therefore, this office cannot state specifically whether or not the 1:30 meeting of the council referenced above validly constituted an "emergency meeting" or not. However, I would refer you to the law as set forth above in the referenced opinions in considering the question of whether the particular "emergency" meeting questioned by you complied with this State's Freedom of Information Act.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General