



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 15, 2001

Milton E. Hamilton, Esquire
Chester County Attorney
Post Office Drawer 808
Chester, South Carolina 29706-0808

RE: Informal Opinion

Dear Mr. Hamilton:

By your letter of February 6, 2001, you have requested an opinion of this Office concerning the Freedom of Information Act and its application to the Chester County Economic Development Board.

By way of background, you have provided us with the following information: The Chester County Economic Development Board of Advisors (Board) was created by ordinance of the Chester County Council in January of 1998. The purpose of the Board is to "plan, develop, and coordinate programs in the assistance of the Chester County Economic Development Office, Director, and Staff." Chester Co. Ord. No. 1-5-98. The duties of the Board are provided in Section V of the ordinance. Subsection (d) of Section V states that the Board shall

have the capabilities to promote and accept financial support for individual services, programs, and events from individual, corporate, governmental, municipal, and other lawful funding sources as necessary.

You have informed us that despite the language of the ordinance giving the Board the capability to receive financial support from public funds, the past president and secretary have assured you that the Board has never received funds nor intends to receive funds for their services. You have also reported that the Board has never received alternative forms of support from public funds, such as through the use of county employees, county office space, or county equipment.

South Carolina's Freedom of Information Act is codified at S.C. Code of Laws § 30-4-10 *et*

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seq. The Act's preamble best expresses both the Legislature's intent in enacting the statute, as well as the public policy underlying it. Section 30-4-15 provides:

The General Assembly finds that 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.

This Office has, on numerous occasions, stated its approach toward construing the Freedom of Information Act, consistent with the foregoing expression of public policy by the Legislature:

As with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to ascertain and give effect to the legislature's intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E. 2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

Op. Atty. Gen. Apr. 11, 1988. To these basic tenets of construction, we would add here that the Freedom of Information Act, as with any statute, must be construed in common-sense fashion, consistent with its purpose. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). In accordance with these guiding principles of law, this Office has consistently advised all courses of action favoring disclosure.

That being said, the Freedom of Information Act only applies to those entities that constitute a "public body" under the Act. Section 30-4-20 defines "public body" as:

... any department of the State, 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, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. ...

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In previous opinions of this Office, much emphasis has been placed on the receipt of public funds as the indicative factor in determining whether an entity is a public body. In an opinion dated November 8, 1979, we concluded that a Solar Energy Advisory Council was not a public body because it did not receive or expend public funds. In another opinion, dated March 17, 1995, we stated that an economic development board would be subject to the Act due to the expansive definition of public body in the Act and "the support of the entity by a large amount of public funding."

Other opinions of this Office have placed less emphasis on the public funding aspect of the definition. In an opinion dated December 17, 1985, we concluded that an ad hoc committee appointed by the Laurens County Council would be subject to the Freedom of Information Act. In response to the argument that the committee received no public funds, it was stated:

This factor is determinative in many instances in which the entity would not otherwise fall within the definition of a 'public body,' Section 30-4-20(c), Code of Laws of South Carolina (1984 Cum. Supp.). See Sanders v. Benton, 579 P.2d 815 (Okla. 1978); Op. Atty. Gen. No. 83-39. It is undisputed, however, that Laurens County Council, the parent entity which created the ad hoc committee, is supported by and expends public funds. In determining whether a committee is subject to an open meetings or Freedom of Information act, the test of expenditure of or supported by public funds as to the committee is not controlling. Rather, the parent entity is examined in this regard. Sanders v. Benton, supra; Carl v. Board of Regents of University of Oklahoma, 577 P.2d 912 (Okla. 1978). On this basis, the ad hoc committee would be subject to the Freedom of Information Act.

In that opinion we also considered the committee's giving of advice to a public body "to be a necessary governmental function . . . Where committees are found to be one-step, however remote, in the decision-making process, courts tend to require committees to open their meetings." Op. Atty. Gen. Dec. 17, 1985. See also Op. Atty. Gen. No. 84-125.

The Chester County Economic Development Board of Advisors presents a novel question because of its capability, by ordinance, to receive public funds but its practice not to do so. Under the first line of opinions one might argue that the entity must actually receive the support to be a public body. But if the actual receipt of funds were the only trigger for the application of the Act, the Board, solely in its discretion, could make the Act applicable by its actions. It troubles us that under this line of reasoning, the Board could inadvertently trigger the Act by, for example, using a county-owned copying machine to make copies of their proposals or using county employees to type the minutes of the meetings. Again, this Office consistently advises against a narrow reading of the provision. Furthermore, the vesting of the authority in the Board to receive public funds arguably indicates the County's intention to create the Board as a public body, regardless of whether the Board actually exercises that authority.

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The second line of opinions strengthens our conclusion that the Board should be considered a public body under the Freedom of Information Act. The Board was created by ordinance by a political subdivision of the State. The Board's purpose is to plan, develop, and coordinate programs to assist the Economic Development Office. Although the law in South Carolina is not entirely clear for an entity such as the Chester County Economic Development Board of Advisors, the Act requires a liberal construction of its provisions. Any doubt should be resolved in favor of disclosure. In our opinion, a court would likely find that the Board's exercise of governmental functions establishes it as a public body under the Freedom of Information Act.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General