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The State of South Carolina



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April 14, 1992

The Honorable Timothy F. Rogers
Member, House of Representatives
530-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Rogers:

By your letter of March 19, 1992, you requested the opinion of our Office on a portion of the newly-enacted amendments to the Freedom of Information Act. You have asked whether the terms of H.3305 (now Act No. 269 of 1992) inhibit in any way the accessing of home addresses and/or home telephone numbers of public employees for use by non-profit professional organizations in membership recruitment and similar activities.

Act No. 269 of 1992 amended S.C.Code Ann. § 30-4-50 by adding:

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

The issue to be addressed, to respond to your inquiry, is what is meant by "commercial solicitation." Because the phrase is not defined within the Freedom of Information Act, it is necessary to resort to rules of statutory construction.

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In interpreting any statute, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if such can reasonably be determined. Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951). Words will be given their literal meanings when they are clear and unambiguous. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

The term "commercial" generally connotes commerce, trade, business, industry, having financial profit as a primary aim, Roberts Enterprises, Inc. v. Secretary of Transportation, 237 Kan. 276, 699 P.2d 479 (1985); an activity normally engaged in for profit, Callejo v. Bancomer, S.A., 764 F.2d 1101 (5th Cir. 1985); in pursuit of profit, Critical Mass Energy Project v. Nuclear Regulatory Commission, 644 F.Supp. 344 (D.C. Cir. 1986); a profit-making venture, In Re Hart's Appeal, 410 Pa. 439, 189 A.2d 167 (1963). The term "solicit" or "solicitation" connotes asking for or trying to obtain something. See Black's Law Dictionary, "solicit," page 1248; "solicitation," page 1249 (5th Ed. 1979). Thus, "commercial solicitation" would involve asking or enticing someone to enter into a financial transaction or purchase goods or services, where profit is a primary aim. Because no opinion can possibly suggest a definition covering all potential instances of "commercial solicitation," and resolution of each request will necessarily depend on facts unique to the request, each request received under the Act for home addresses and/or telephone numbers of officers and employees will require scrutiny to determine how the sought-after information will be used.^{1/} This Office is, of course, not empowered to make factual determinations. Op. Atty. Gen. dated December 12, 1983.

Applying the foregoing, the accessing of home addresses and home telephone numbers of officers and employees of a public body for use by a non-profit professional organization for membership recruitment and similar activities does not, on its face, appear to fall within the definition of "commercial solicitation." Of course, the public body to whom such a request is presented would ultimately make the determination as to whether a particular activity would constitute "commercial solicitation" or to release any records under the Act.

^{1/} Other concerns must also be considered in deciding whether to release home addresses and telephone numbers of public employees. These concerns were outlined in Op. No. 87-69, dated July 16, 1987, a copy of which is enclosed.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions