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The State of South Carolina



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May 2, 1989

H. Spencer King, Esquire
City Attorney
City of Spartanburg
P. O. Box 3483
Spartanburg, South Carolina 29304

Dear Spencer:

Attorney General Medlock has referred your letter of April 20, 1989 to the Opinions Section for reply. You have asked whether your interpretation of Sections 2-49, 2-50, 2-59 and 2-63 of the Spartanburg City Code is correct. Specifically, you referenced Section 2-63 (b) which provides that by common consent of all members present at a regular meeting, the rules of procedure as set forth in the Spartanburg City Code may be temporarily suspended, with the exception of those rules prescribed in accordance with the laws of the state. Apparently, a question has arisen concerning whether or not a matter can be placed on the agenda of city council during a meeting that is not included in the agenda as described in Section 2-49. Specifically, Section 2-49 requires that all reports, communications, ordinances, resolutions, contract documents or other matters to be submitted to City Council must be delivered or submitted to the city manager at least four (4) days prior to such meeting.

We concur with your conclusion that City Code Section 2-63 (b) would govern this situation. If indeed all members present at a regular meeting vote to suspend temporarily the rules of procedure, such suspension may occur. This provision would appear to include Section 2-49 concerning City Council's agenda described above. Section 2-63 appears to have been adopted pursuant to Section 5-7-250 (b) of the Code of Laws of South Carolina (1976 as amended) which provides that "[t]he council shall determine its own rules and order of business ...".

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I would note also that Section 5-7-250 (c) provides as follows:

Procedures for meetings of a municipal governing body shall not conflict with the provisions of the general laws of the state with regard to freedom of information.

Section 30-4-80 (a) of the Code (Freedom of Information Act) provides in pertinent part that:

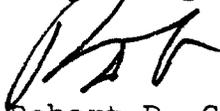
[a]genda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings.

Of course, the placement of business on the agenda cannot be used to circumvent the Freedom of Information Act or any other provision of law governing notice to other board members or to the general public. See, Op. Atty. Gen., September 6, 1984. [All members of a board must have notice of a meeting and be provided with opportunity to be present and discuss items of business]. In other words, if it is anticipated that an item will be on the agenda, it should be placed there. However, with that caveat, we concur in your conclusion and your advice issued to Spartanburg City Council.

If we can be of further assistance, please let us know.

With kind personal regards, I remain

Very truly yours,



Robert D. Cook
Executive Assistant for Opinions

RDC/an