

The State of South Carolina



Office of the Attorney General

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September 21, 1989

Ms. Margaret A. Davidson
Executive Director
South Carolina Sea Grant
Consortium
287 Meeting Street
Charleston, South Carolina 29401

Dear Ms. Davidson:

By your letter of August 14, 1989, you have asked for the opinion of this Office as to whether the Charleston Harbor Estuary Citizens' Committee would be a public body and thus subject to the requirements of the South Carolina Freedom of Information Act, Section 30-4-10 et seq., Code of Laws of South Carolina (1988 Cum. Supp.).

You have advised that the Charleston Harbor Estuary Citizens' Committee ("Committee") is an ad hoc group of individuals including representatives of state regulatory agencies, private businesses, municipal and county governments, and private citizens. The Committee was initially convened under the auspices of Congressman Arthur Ravenel and the South Carolina Sea Grant Consortium ("Consortium") as a one-time workshop sponsored with funds awarded to the Consortium by the United States Environmental Protection Agency and National Oceanic and Atmospheric Administration to identify priority issues and concerns related to the Charleston Harbor Estuary. When members of this group expressed interest in continued meetings, the Consortium agreed to provide meeting space and assisted with organizational aspects of these meetings. A staff member of the Consortium has devoted some time working with this group. Expenses related to postage, printing, and transportation and accommodations for speakers have been met through the same EPA/NOAA funds referenced above (i.e., federal funds).

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You further advise that the Committee is not incorporated through the Secretary of State and has no bylaws. The Committee has no receipts, disbursements, bank accounts or treasury, and expends no public funds of any kind.

While Section 30-4-20(a) of the Code contains a definition of the term "public body," that definition has not yet been construed by the appellate courts of this State. To provide a complete answer to your question would necessitate the finding of fact, which this Office is not empowered to do. For purposes of this opinion, the foregoing facts will be assumed to provide as much guidance as is possible.

At the outset, it may be noted that the General Assembly has declared, in section 1 of Act No. 118, 1987 Acts and Joint Resolutions:

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 repeatedly advised that since the Freedom of Information Act is remedial in nature, it must be liberally construed to carry out the purposes mandated by the General Assembly. See, for examples, Ops. Atty. Gen. dated March 27, 1984; February 22, 1984; and August 8, 1983.

The term "public body" is defined in Section 30-4-20(a) to mean

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, ...

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If a court were responding to your question, its task would be to determine whether the Charleston Harbor Estuary Citizens' Committee would fall within this definition. For the reasons following, it is our opinion that this entity would probably be a public body and thus subject to the terms of the Act, though this conclusion is not free from doubt.

Clearly, this Committee is not a department of the State, a state board, commission, agency, governmental body, political subdivision, county, municipality, township, school district, or special purpose district. The fact that the Committee was not created by a provision of the South Carolina Constitution, a statute, ordinance, or resolution supports this conclusion. Additionally, the Committee does not perform exclusive governmental functions or make policy affecting citizens' fundamental rights, factors often considered in terms of the governmental bodies enumerated in the Act. See, for examples, State ex rel. Doyle v. Rapides Parish Democratic Executive Committee, 32 So.2d 494 (La.Ct.App. 1947); Accardi v. Mayor and Council of North Wildwood, 145 N.J. Super. 532, 368 A.2d 416 (1976).

If at all, then, the Committee must come within that portion of the definition as follows: "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds... ." Public funds are, generally, funds belonging to a state or county or other political subdivision, more especially taxes or other such moneys raised by the operation of some general law and appropriated by the government for the discharge of its obligations or for some public or governmental purpose. Beckner v. Commonwealth, 174 Va. 454, 5 S.E.2d 525 (1939); State ex rel. St. Louis Police Relief Association v. Igoe, 340 Mo. 1166, 107 S.W.2d 929 (1937). Grant funds of a federal agency are unquestionably public funds.

The notion of "support" has been construed by the South Carolina Supreme Court to mean "to maintain or aid and assist in the maintenance," Harris v. Leslie, 195 S.C. 526, 12 S.E.2d 538, 542 (1940), or to "uphold or sustain." State v. Stokes, 133 S.C. 67, 130 S.E. 337, 339 (1925).

The term "association" probably most closely describes the status of the Committee. The term "association" is said to have a vague meaning, 6 Am.Jur.2d Associations and Clubs §1, but has been defined in cases such as Penrod Drilling Co. v. Johnson, 414 F.2d 1217, 1222 (5th Cir. 1969):

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The definition of an association given in 7 C.J.S. Associations §1, at p. 19, is as good as any: "An 'association' is a body of persons acting together, without a charter, but upon the methods and forms used by corporations, for the prosecution of some common enterprise."

The Committee is an ad hoc body of persons, acting together, without any kind of charter, for the common interest in the Charleston Harbor Estuary. Thus, the Committee is, if anything, an "association." Whether the Committee is supported by public funds must be examined. 1/

As stated earlier, the Committee does not have a treasury, receives no direct monetary support, and does not expend funds. "In kind" support is being furnished by means of the time of a staff member of the Sea Grant Consortium, which entity also provides meeting space. Funds from EPA/NOAA are being used on behalf of the Committee by the Sea Grant Consortium to pay for postage, printing, and transportation and accommodations for speakers for Committee meetings. These expenditures of grant (i.e., public) funds on behalf of the Committee, while not expended by the Committee itself, do aid in the support of the Committee. Indeed, no other funds of which we are aware are expended by or on behalf of the Committee. It thus appears to this Office that the Committee is probably totally supported (actually or "in kind") by public funds of some kind. Thus, the Committee probably would be subject to the terms of the Freedom of Information Act, though only a court could determine this issue conclusively.

We emphasize that, due to the paucity of judicial decisions in this State construing the definition of "public body" in the Freedom of Information Act and giving guidance as to the amount of support necessary to bring an entity within the definition of "public body," this opinion cannot be free from doubt. To exercise caution, however, the prudent course of action to take, as we usually advise in doubtful cases, is to follow the terms of the Freedom of Information Act.

1/ This Office has noted previously that the definition of "public body" does not give guidance as to what kind of support (or how much) is required to bring an entity within its terms. Ops. Atty. Gen. dated July 11, 1983 and March 27, 1984. Again, we cannot over-emphasize the need for factual determination by a court, the existence of some doubt as to the conclusion expressed in today's opinion, and that we may only offer guidance as to the conclusion which a court might reach.

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With kindest regards, I am

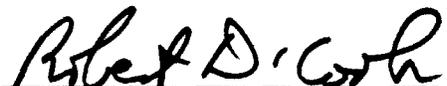
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:



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