

The State of South Carolina



J. Travis Medlock
Attorney General

803-734-3970
Columbia 29211

Attorney General

October 11, 1989

Millard G. Smith
Executive Secretary
Anderson County Department
of Education
402 Bleckley Street
Anderson, South Carolina 29625

Dear Mr. Smith:

Referencing revisions of the Freedom of Information Act, you asked for the opinion of this Office as to requirements for proper notification as to meetings of public bodies under the Act. In particular, you have asked:

1. Who should be notified?
2. What is proper legal notice for notification?
3. Whose responsibility is it to make sure that notification is received?

After a review of the Act's purpose and a discussion of the statutes concerning notice, your specific questions will be addressed. 1/

South Carolina's Freedom of Information Act is codified in Section 30-4-10 et seq., Code of Laws of South Carolina (1988 Cum. Supp.). The General Assembly has made the following findings in Section 30-4-15:

... 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

1/ Some of your questions were addressed by Op. Atty. Gen. No. 84-20. Subsequently, however, the Freedom of Information Act was amended by Act No. 118, 1987 Acts and Joint Resolutions. To the extent that today's opinion is inconsistent with Opinion No. 84-20, today's opinion will be deemed to be controlling.

Millard G. Smith
Page 2
October 11, 1989

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 advised repeatedly that, in view of the General Assembly's expressed findings, the Act is remedial in nature and must be liberally construed to carry out its purposes. See, South Carolina Dept. 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 Publishing Co. v. Interim Bd. of Ed. for Wake County, 223 S.E.2d 580 (N.C. 1976).

To fulfill the purposes expressed by the General Assembly, that body has declared that, unless specifically excepted, "[e]very meeting of all public bodies shall be open to the public... ." In Op. Atty. Gen. dated August 8, 1983, this Office concluded:

The Freedom of Information Act applies to any meeting of a public body, as defined in the Act, whether the meeting is designated as formal or informal and whether action is taken upon public business or merely discussed. A public body may not ignore the requirements of the Act when it discusses public business over which it has supervision, control, jurisdiction or advisory power by holding a meeting, as defined, in an informal or social setting.

See also Braswell et al. v. Roche et al., Op. No. 23067, filed in the Supreme Court on August 21, 1989. Thus, we continue to advise that, with very few exceptions, all meetings held by a public body are to be open to the public and media.

For the public to learn of the activities of a particular public body, the public must of course be notified as to the convening of the public body. Toward that end, Section 30-4-80 sets forth notice requirements to be observed by a public body. In relevant part, that statute provides:

(a) 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.

. . . .

(c) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (a), must make reasonable and timely efforts to give notice of their meetings.

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

As stated earlier, these requirements must be liberally construed to carry out their legislative purpose to adequately inform the public. These requirements are mandatory and may not be ignored by a public body. See, White v. Battaglia, 434 N.Y.S. 2d 537 (1980). The section requires overt and affirmative action by the public body to fulfill the notice requirements. Hyde v. Banking Bd., 552 P.2d 32 (Colo. 1976); Jenkins v. Newark Bd. of Ed., 166 N. J. Super. 357, 399 A.2d 1034 (1979). The Act's basic requirements concerning notice will now be addressed.

Regular Meetings

Section 30-4-80(a) first requires all public bodies to "give written public notice of their regular meetings at the beginning of each calendar year." A "regular" meeting is usually convened at stated times and places pursuant to statute or resolution. Barile v. City Comptroller, 288 N.Y.S.2d 191, 196 (1968). The notice must include the dates, times, and places of such meetings.

The agenda, if any, for a regularly scheduled meeting 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 meeting.

"Written public notice," as provided in Section 30-4-80(d), must include, at a minimum, the posting of a copy of the notice at the principle office of the public body or, if the public body has no such office, at the building where the meeting is to be held.

Called, Special, Rescheduled Meetings

Section 30-4-80 (a) also gives notice requirements for called, special, or rescheduled meetings. Notice must be posted on a bulletin board at the office or meeting place of a public body as early as is practicable, but not later than twenty-four hours before the meeting. This notice must include the agenda, date, time, and place of the meeting.

In considering the timing for placement of the notice in case of a called, special, or rescheduled meeting, this Office advised in Opinion No. 84-20 that as much notice as possible under the particular circumstances should be given:

A useful rule of thumb, appearing to comport with such intent is: the farther in advance a meeting is scheduled or called, the earlier the notice should be posted. At an absolute minimum, however, notice must be posted twenty four hours in advance of the meeting.

Emergency Meetings

The only meetings to which these notice requirements do not apply are emergency meetings. Section 30-4-80(a). This Office defined the term "emergency" in Opinion No. 84-20 and advised that "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." This exception must be narrowly construed.

Committees, Subcommittees

The definition of "public body" was amended in 1987 by Act No. 118 to include "committees, subcommittees, advisory committees, and the like of any such body by whatever name known... ." Prior to and subsequent to the amendment, this Office opined that committees of public bodies would be subject to the same requirements, with respect to the Freedom of Information Act, as would the parent body. See Ops.Atty.Gen. dated June 1, 1984; October 26, 1984; December 17, 1985; February 29, 1988; April 11, 1988. Thus, committees of public bodies, however such are denominated, would be required to follow the notice requirements of the Act.

Millard G. Smith
Page 5
October 11, 1989

Section 30-4-80(c) of the Act requires that subcommittees of committees covered by the Act themselves "make reasonable and timely efforts to give notice of their meetings." A good rule of thumb for subcommittees would be to follow the requirements of Section 30-4-80 insofar as possible.

Whom To Notify

The 1987 amendments to the Act changed, to some degree, the requirements as to the affirmative action to be taken by a public body with respect to provision of notice to the media and interested persons. See Section 30-4-80(e). Subsequent to amendment in 1987, a public body must provide notice of all public meetings, whether scheduled, rescheduled, or called, to "persons or organizations, local news media, or such other news media as may request notification... ." The 1987 amendment added "persons or organizations" to those who may request notification. This requirement ensures that as great a public awareness as may be possible be achieved; the public thus need not rely solely on seeing a notice posted on a bulletin board at an office or meeting place, or on the media, to be fully informed.

We have noted previously, in Opinion No. 84-20, that the language of this provision (formerly Section 30-4-80(d)) is ambiguous in that it appears to require a public body to provide notice only to those representatives of news media who request notice. We have interpreted the provision more liberally, suggesting that notice as described above be provided to newspapers of general circulation in the area served by the public body, as well as to representatives of the broadcast media. Should "other news media" or individuals or organizations request to be advised of meetings of a public body, the public body could comply with such requests by the same means as compliance is had with local news media.

The extent of a public body's efforts to comply with these various requirements for notifying the public and news media, and any person or organization who requests notification, is to be documented in the minutes of the meeting of the public body. Section 30-4-80(e).

The receipt of notice by the news media or anyone else who requests it is not an issue covered by the Freedom of Information Act. The public body has an affirmative duty to comply with the Act and to document its efforts to carry out its affirmative duty. There is no requirement of sending notice by registered mail and obtaining a return receipt, for example. The public body could make reasonable efforts to resubmit the required notice in such cases as when a recipient moves or changes its address, in a good faith effort to comply with the letter and the spirit of the Act.

Millard G. Smith
Page 6
October 11, 1989

Conclusions

Based on the foregoing, this Office advises the following in response to your specific questions:

1. The following should be notified of a scheduled, rescheduled, or called meeting of a public body: local news media (newspapers and broadcast media); and other news media, persons, or organizations who may request to be notified. Generally, the public should be notified by the posting of a notice at the office or meeting place of the public body.

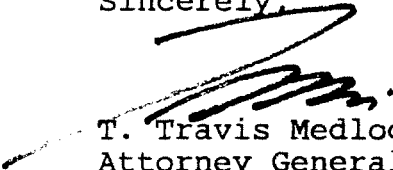
2. A proper notice for a regularly scheduled meeting would include the date, time, and place of such meeting and agenda, if any. For a called, special, or rescheduled meeting, the notice must include the date, time, and place of such meeting and the agenda. For regular meetings, written public notice must be provided at the beginning of each calendar year. For called, special, or rescheduled meetings, public notice must be given as far in advance as is possible but no less than twenty-four hours notice may be given.

3. The Freedom of Information Act does not indicate any responsibility on the part of anyone or any entity to ensure that notification, as outlined above, has been received.

4. The foregoing construes Section 30-4-80 of the Code and updates Opinion No. 84-20 to the extent of the 1987 amendments to the Freedom of Information Act. (A copy of the prior opinion is enclosed for reference.) Public bodies are encouraged to take all steps necessary to comply with both the letter and the spirit of the Act, to carry out the expressed purpose of keeping the public informed about the performance of their public officials and the conduct of public business. If any doubt exists as to action to be taken, the doubt should be resolved in a manner designed to promote openness and greater notice to the public.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

TTM/nnw
Enclosure