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ALAN WILSON
ATTORNEY GENERAL

August 5, 2014

The Honorable Geneva Lawrence, Mayor pro tempore
Simpsonville City Hall
118 N.E. Main St.
Simpsonville, SC 29681

Dear Mayor Lawrence:

Attorney General Alan Wilson has referred your letter dated June 12, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter): "Simpsonville has just implemented Standing Committees with three council members on each committee. Two friends that have always gone to lunch and on day trips together happen to be on a committee together. Since the two now present a quorum, does this mean they will no longer be able to socialize?"

Law/Analysis: Let us begin by examining the applicable sections of the law concerning the South Carolina Freedom of Information Act. The South Carolina Freedom of Information Act ("FOIA") is found in 30-4-10 et seq. of the South Carolina Code of Laws. The South Carolina General Assembly clearly stated concerning the intent of FOIA:

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.

South Carolina Code § 30-4-15 (1976 Code, as amended). FOIA's quintessential purpose is for the protection of the people. *Seago v. Horry County*, 378 S.C. 414, 663 S.E.2d 38 (2008).

Keeping FOIA's purpose in mind, let us review some of South Carolina's FOIA statutes. South Carolina Code § 30-4-60 states:

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.

South Carolina Code § 30-4-20(d) defines a meeting as:

[T]he convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

South Carolina Code § 30-4-20(a) defines a public body as:

[A]ny department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, 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. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

Moreover, under the South Carolina Freedom of Information Act, a quorum is defined as “a simple majority of the constituent membership of a public body.” S.C. Code § 30-4-20(e).

This Office agrees that:

- 1) A committee is a public body (S.C. Code § 30-4-20(a));
- 2) Two members on the same committee could constitute a quorum (S.C. Code § 30-4-20(e));
- 3) A meeting of the quorum would trigger a meeting of the committee (S.C. Code § 30-4-20(d));
- 4) A meeting of a public body must be open unless it is an exception (S.C. Code § 30-4-60).

However, a meeting is defined as “a quorum ... to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. Code § 30-4-20(d). Where there is no discussion or action on a matter which the committee would have “supervision, control, jurisdiction or advisory power,” there would likely be no meeting.

Nevertheless, we urge caution to you as FOIA is specific in stating:

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

S.C. Code § 30-4-70(c). Furthermore, there are numerous legal opinions concerning FOIA. As this Office has previously stated concerning FOIA questions, “each situation would have to be judged on its own facts.” Op. S.C. Atty. Gen., 2004 WL 2451475 (October 7, 2004) (quoting Op. S.C. Atty. Gen., 2002 WL 31341811 (August 19, 2002)). One such opinion noted that even advisory committees must follow FOIA. Op. S.C. Atty. Gen., 2005 WL 292232 (January 27, 2005). A 1983 opinion concluded that a

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meeting includes informal as well as formal meetings. Op. S.C. Atty. Gen., 2006 WL 2593081 (August 11, 2006) (citing Op. S.C. Atty. Gen., 1983 WL 142726 (August 8, 1983)). The 1983 opinion also stated that:

[FOIA] must be liberally construed in order to fulfill its remedial purpose. When all of these factors are considered in light of the statutory definition of "meeting", it is evident that the mere fact that a gathering is characterized as "social" in nature is not controlling, what is instead dispositive is whether the gathering or convening of the body is "to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." Authorities from other jurisdictions agree with this conclusion in that they recognize no real distinction between formal and informal gatherings for purposes of the applicability of the Freedom of Information Act. ...

Op. S.C. Atty. Gen., 2006 WL 2593081 (August 11, 2006) (quoting Op. S.C. Atty. Gen., 1983 WL 142726 (August 8, 1983)). Another 1983 opinion concluded that breakfast meetings between a member of the General Assembly and elected officials discussing legislation and assistance would be subject to FOIA. Op. S.C. Atty. Gen., 1983 WL 142769 (December 21, 1983). These are just a few examples of previous opinions concerning issues similar to the question you raised. Please know there are many other opinions on the subject of FOIA if you desire further reading. Moreover, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. Ops. S.C. Atty. Gen., 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969)). As the State Supreme Court cautioned in Richardson v. Blalock, 118 S.C. 438, 110 S.E. 678 (1922), "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." Op. S.C. Atty. Gen., 2003 WL 21471505 (June 10, 2003).

Conclusion: Based on the law of this State at this time and prior opinions issued by this Office, as referenced above, this Office believes a court will likely determine that the South Carolina Freedom of Information Act would not apply to socializing where no business matters are discussed or acted upon, as determined on a case-by-case basis. We emphasize, however, that this Office construes FOIA broadly and all doubt must be resolved in favor of openness. Thus, a strict adherence to no business being discussed must be followed for FOIA not to apply. However, until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. Moreover, there are many other sources and authorities you may want to refer to for a further analysis. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law can interpret statutes, S.C. Code § 15-53-20, et al. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

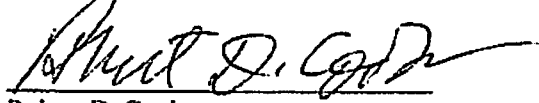


Anita S. Fair

Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General