

1980 S.C. Op. Atty. Gen. 43 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-19, 1980 WL 81903

Office of the Attorney General

State of South Carolina

Opinion No. 80-19

FEBRUARY 7, 1980

**\*1 SUBJECT: Meetings, Reorganization Commission subcommittee meetings, records; Open meetings, Reorganization Commission Subcommittee meeting, records; Public information, meetings, Reorganization Commission Subcommittee meetings, records; State agencies, (Reorganization Commission, Freedom of Information on meetings and records, subcommittees;**

Subcommittee meetings may be closed as they do not fall under the definition of 'meeting' in the Freedom of Information Act. The receipt of staff reports for discussion and information purposes may be construed as constituting administrative briefings which may be closed to the public. If there is no valid reason why staff reports should not be public knowledge then the meetings for their receipt should be open. All documents and working papers prepared for or discussed in executive session or in an administrative briefing are not subject to immediate and mandatory disclosure under the Freedom of Information Act.

TO: Mr. Phillip G. Grose, Jr.  
State Reorganization Commission

QUESTIONS:

- (1). Under the Freedom of Information Act what constitutes an open and a closed meeting, when are such required or appropriate, and what procedure should be taken to close a meeting?
- (2). Where members of the State Reorganization Committee or its subcommittee wish to receive staff reports for information and discussion, would closed meetings, if no formal action were taken, constitute 'administrative briefings,' and if so, under what conditions would they properly be open or 'closed' to the public?
- (3). Would documents and working papers discussed at such meetings be considered public documents immediately available to the public and press?

STATUTES: §§ 30-4-10, 30-4-20, 30-4-60, and 30-4-70.

DISCUSSION:

South Carolina Code of Laws (1976), § 30-4-10, *et seq.*, is known as the Freedom of Information Act. The State Reorganization Committee is a public body under § 30-4-20 of the Act and therefore subject to its strictures.

Your first inquiry concerned the distinction between an 'open' and a 'closed' meeting, for what purpose a meeting might be closed, and the procedure necessary to close such a meeting. § 30-4-20(d) defines a 'meeting' as the 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. § 30-4-20(e) defines 'quorum' as being a simple majority of the constituent membership of the public body unless otherwise defined by applicable law. § 30-4-60 states that every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 which lists the purposes for which a meeting may be closed.

Under the definition of ‘meeting’ found in the Act, for the strictures of the Act to be applicable there must be a gathering of a simple majority of the constituent membership of the public body before the public has a right to be present. Therefore, a subcommittee meeting does not have to be ‘open’ to the public so long as the subcommittee members do not make up a simple majority of the entire body. Where in a subcommittee meeting there is a simple majority gathered then the Act would apply and the ‘meeting’ must be open unless closure is proper under § 30–4–70.

\*2 § 30–4–70 lists with specificity when a meeting may be closed. A meeting may be closed for:

1. Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, or the appointment of a person to a public body.
2. Discussion of negotiations concerning proposed contractual arrangements and the proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.
3. Discussion regarding the development of criminal misconduct.
4. Investigative proceedings regarding allegations of criminal misconduct.
5. For the purpose of receiving an administrative briefing.

To more specifically answer your question, an ‘open’ meeting is a gathering of at least a simple majority of the constituent membership of a public body which is open to the public. A ‘closed’ meeting is a gathering of at least a simple majority of the constituent membership of a public body from which the public is excluded in the manner required by statute. § 30–4–70(a) (5) states that prior to going into executive session the public body must in public vote to close the meeting and if the vote is favorable the presiding officer must announce the purpose for the executive session. Under § 30–4–70(b), a meeting may be closed and the public excluded by a three-fourths vote of its members present for the receipt of an administrative briefing.

In answering your second inquiry, as indicated above, a subcommittee, so long as its membership is less than a simple majority of the constituent membership of the public body as a whole, is not required by the Freedom of Information Act to hold open meetings. A subcommittee may receive staff reports for information and discussion in executive session at its discretion and § 30–4–60 is inapplicable based on the statutory definition of ‘meeting.’ As for a regular meeting of the Commission there would of necessity have to be a three-fourths vote by the membership present at the meeting to close a meeting for the purpose of an administrative briefing under § 30–4–70(b). ‘Administrative briefing’ is not defined in the statute. The only guideline given is that there must be ‘. . . some exceptional reason so compelling as to override the general public policy in favor of public meetings.’ § 30–4–70(b). It is the opinion of this Office that an ‘administrative briefing’ would encompass the receipt of staff reports for the purpose of information and discussion particularly when the subject being discussed otherwise qualifies for executive session although this qualification is not a necessity. The statute requires that the vote be recorded and the reasons for the administrative briefing be recorded. Further, the Act contemplates that no formal action be taken in an executive session for the purpose of the receipt of the administrative briefing. A formal action is defined as a recorded vote of the members of a public body ‘committing the body concerned to a specific course of action.’ While formal action may be taken while in executive session under § 30–4–70(a)(5), no such action is provided for in a meeting closed for the receipt of an administrative briefing under § 30–4–70(b). To concisely answer your second inquiry, it is the opinion of this Office that you may by a three-fourths vote of the membership present at a meeting of the Commission close that meeting for the purpose of receiving an administrative briefing consisting of staff reports for discussion and information purposes. The Commission must, however, keep in mind the statutory requirement of ‘some exceptional reason so compelling as to override the general public policy in favor of public meetings.’ If there is no such reason present then the meeting should be kept open.

\*3 Your third inquiry concerns whether or not documents and working papers discussed in executive session or in a meeting closed for the receipt of administrative briefing are immediately available to the public and to the press. The rule was laid down in [Cooper v. Bales, 268 S.C. 270, 233 S.E.2d 306 \(1977\)](#), that documents which were incomplete working papers utilized for administrative briefings and in executive session were privileged subject matter and not subject to mandatory public disclosure. Justice Ness stated that all sections of the Freedom of Information Act must be harmoniously construed and that the section allowing for executive sessions and closed meetings would be rendered meaningless if the section allowing access to public records was construed so as to publicize all matters discussed in executive session. The Court stated, 'Authorized closed meetings with mandated revelation of the records of such meetings would produce an irreconcilable and nonsensical result and we refuse to apply such an interpretation. Although [Bales](#), supra, was decided under the prior Freedom of Information Act, it is the opinion of this Office that in this instance the rationale and policy behind that decision is still good law. Therefore, it is the opinion of this Office that documents and working papers utilized in meetings closed for administrative briefings or in executive sessions are not subject to immediate and mandatory public disclosure.

CONCLUSION:

The Freedom of Information Act only applies to 'meetings' of a public body and 'meeting' is defined by statute as a '... quorum of the constituent membership of a public body . . .'. If a subcommittee does not contain a simple majority of the public body then it is not bound by the requirements of the Freedom of Information Act and may close its meetings to the public at its discretion. The statute requires that all meetings be open to the public unless closed pursuant to § 30-4-70 which defines when and in what manner a public body may go into executive session or close a meeting to receive an administrative briefing. A public body may go into executive session upon a favorable vote to that end and upon stating the purpose of the executive session or a public body may close a meeting to receive an administrative briefing upon a three-fourths vote and a statement of the reason for such closure. Documents and working papers discussed and utilized in executive sessions and for administrative briefings need not be made public under the Freedom of Information Act.

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