

1978 S.C. Op. Atty. Gen. 247 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-214, 1978 WL 22682

Office of the Attorney General

State of South Carolina

Opinion No. 78-214

January 23, 1978

*1 Action of Town Council in executive session in discharging Town Manager must be ratified in public session prior to becoming effective.

The Honorable Leonard B. Burgess

Mayor

Town of Kingstree

Post Office Box 207

Kingstree, South Carolina 29556

Dear Mr. Mayor:

It is my understanding that the following circumstances exist with respect to matters which recently took place before the Town Council of Kingstree:

An executive meeting of the Council was called to consider personnel matters. During the meeting, the Council voted to request the Town Manager to resign, which request was refused. Following this, the Town Council then executed a document terminating the Manager's employment upon stated reasons. The action of the Council has not been rectified in public session following the close of the executive session.

The Freedom of Information Act, as amended in 1976, provides in Section 30-3-40 that:

'Prior to going into executive session, the public agency shall vote in public on the question, and when such vote is favorable, the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this subsection, 'formal action' means a recorded vote committing the body concerned to a specific course of action.'

In my opinion, the act of the Council in executing the document terminating the services of the Town Manager is a formal action of the Council within the meaning of the above section of the Freedom of Information Act. In order to make it effective, it must be ratified in a public session. Should the Council adopt such a course, any request for a public hearing by the Town Manager must be filed within five days subsequent thereto.

Very truly yours,

Daniel R. McLeod

Attorney General

P.S. This letter is written without consultation with the late Rogers Harrell, who was County Attorney, and was taken ill while I was attempting to reach him by telephone.

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D.R.M.

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