

1975 WL 28950 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 23, 1975

*1 Mr. George Warren, Jr., Esquire
Hampton County Attorney
Post Office Box 27
Hampton, South Carolina 29924

Dear Mr. Warren:

You have requested an opinion of this Office as to whether the Hampton County Council may destroy claims filed against the County ten years or more ago, and thus no longer valid because of the statute of limitations.

In 1973 a statute was enacted by the General Assembly which generally provides for the retention and disposal of public records of this State and its political subdivisions. (Act No. 291 of 1973, as codified in § 1-581-1-594 of the 1962 Code of Laws of South Carolina, as amended.)

Section 1 of Act No. 291 defines the term 'public records' in part as follows:

'[P]ublic records' means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency, regardless of physical form or characteristics. . . . (Emphasis added)

As to the retention and disposal of public records, the statute provides in Section 9:

. . . When requested by the [South Carolina Department of Archives and History], agencies and subdivisions shall assist the Archives to prepare an inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision or the head of the agency having custody of the records, the Director of the Archives, and in case of records of state . . . agencies, the State Budget and Control Board. This schedule shall serve as authorization for the destruction of records retained for the stated time period. . . .

In Section 11 the act further provides:

If any public records of any agency or subdivision in the custody of the Archives prove to be of insufficient value to warrant permanent preservation, the Director [of the Department of Archives and History], with the approval of the Archives and History Commission, may submit a statement or summary of the records or material to the State Budget and Control Board and to the agency or subdivision certifying the type and nature of the records or material and requesting approval of the destruction or disposal request. Upon receipt of such approval, the Director may destroy or dispose of the public records. . . .

The core issue of your inquiry therefore, becomes whether the subject claims are considered 'public records,' and hence subject to the above provisions. Since the above cited definition of 'public records' includes 'all documents containing information relating to the conduct of the public's business prepared, owned, and used, or retained by any public agency,' and furthermore since Section 14-405 of the Code specifically provides that the governing body of each county must

keep a 'File Book' of claims presented against the county, it is certain, in my opinion, that the subject claims are 'public records' within the purview of Act No. 291 of 1973.

*2 Therefore, it is the opinion of this Office that the subject claims may not be destroyed without appropriate approval in the prescribed manner. I am informed by the South Carolina Department of Archives and History that Mr. Julian L. Mims, Supervisor, County Records Program (telephone number 758-5816), is the appropriate official to contact in this regard, and that compliance with the law can be accomplished with a minimum of inconvenience.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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