

1973 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3512, 1973 WL 20972

Office of the Attorney General

State of South Carolina

Opinion No. 3512

April 13, 1973

*1 Monerable Russell C. Warren
Member
Colleton County Board of Administrators
Post Office Box 933
Walterbore, South Carolina 29438

Dear Mr. Warren:

Your request for an opinion of recent date addressed to the Attorney General has been referred to me for consideration and reply.

Your letter states that you, as a member of the Colleton County Board of Administrators, during a regular meeting of the board presented a matter on behalf of several residents of Colleton County, and while the matter was not approved, there was a subsequent refusal when requested by you, to include this business in the written minutes of the board meeting. Your question now being whether or not the Chairman who refused to allow the business to be recorded in the minutes has a right to do so.

South Carolina does not have a case on this point, however, the general law is stated in 56 Am. Jur. 2d Municipal Corporations, Etc. § 177 as follows:

‘It is generally required that the action of a municipal council be expressed by minutes, recorded as it takes place, in books kept for that purpose by its clerk or secretary, and it is held in some jurisdictions that even in the absence of a statutory requirement the failure of the recording officer to spread the action of the council upon the records with the consent or approval of the council renders such action null and void. Other jurisdictions, however, have adopted the view that a statute requiring the keeping of records is merely directory, and therefore, failure by the clerk to record the proceedings does not invalidate the action of the council. Where it is a compulsory matter to keep such records, the officer in charge of keeping them may be compelled to record the proceedings.’ (emphasis added).

Section 1 of Act No. 780 of the 1966 Acts among other things creates the Board of Administrators of Colleton County, specifies that the county supervisor shall serve ex officio, and designates him as chairman of the board. Section 14–250, Code of Laws of South Carolina (1962) provides as follows:

‘The county supervisor shall cause a record to be kept of all the proceedings of the board of which he is herein made chairman, as well as a record of all contracts entered into with such boards, as provided in this Title. Such records shall be open to public inspection. All necessary books and materials for keeping the same shall be paid for out of the funds herein provided for the respective boards in the same manner as other charges are paid.’ (emphasis added).

In the opinion of this office the requirement of Section 14–256, supra, is not a mere directory requirement, but a mandatory requirement to keep a record of all proceedings of the board. Therefore, any matter which is presented at a meeting must be duly recorded in the minutes of the Board of Administrators.

Under the provisions of Section 1–20, et seq., Code of Laws of South Carolina (1962), 1972 Supp., [Freedom of Information Act] in addition to the requirement of Section 14–256, supra, that the records are open to public inspection, also declares public

records to be open to inspection and copying. Public records are defined in Section 1–20.1 of the Freedom of Information Act in part as follows:

*2 ‘public records means the records of all 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 . . .’

Without question the County Board of Administrators comes within the definition of a ‘public agency’ as defined in Section 1–20.1, of the Freedom of Information Act. I point out the provisions of the Freedom of Information Act, in addition to the requirement to keep a record of all proceedings, because the provisions of the law could be easily breached if at the whim or caprice of the responsible official it was decided that a matter presented at a public meeting would simply not be entered on the minutes. A citizen unquestionably not only has the right to attend a formal regular meeting of the governing body and to inspect its records, but he also has a right, in the opinion of this office, to inspect a record which accurately reflects the matters which were presented for consideration, even though no action was taken thereon.

As requested in your letter, I am pleased to enclose several copies of the powers and duties of the Board of Administrators of Colleton County as contained in Section 3 of Act No. 780 of the Acts of 1966.

Very truly yours,

Reymond G. Halford
Assistant Attorney General

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