Memorandum

To: Faculty and Senate Committee Chairs
From: Robert Mignone, Speaker of the Faculty
Re: Freedom of Information Act
Date: September 13, 1996

Enclosed you will find a copy of the relevant sections of the South Carolina Freedom of Information Act pertaining to the announcing of meetings and minutes of meetings. Earlier this semester I sent an email message around the campus describing one way that meetings could be announced. If an email message is sent to all faculty on the network announcing a committee meeting, I will copy and post the message on the bulletin board in the Faculty Lounge on the second floor of Maybank Hall. This should cover the campus community with or without email.
§ 30-4-70  

Public Records

distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case-by-case basis. 1984 Op Att’y Gen, No. 84-125, p. 281.

Meeting of work group to study claims of Catawba Indians may be held in executive session. 1980 Op Att’y Gen, No 80-55, p 105.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976-77 Op Att’y Gen, No 77-45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976-77 Op Att’y Gen, No 77-243, p 180.

1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976-77 Op Att’y Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976-77 Op Att’y Gen, No 77-288, p 219.

§ 30-4-80. Notice of meetings of public bodies.

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

(b) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

(c) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (a), must
make reasonable and timely efforts to give notice of their meetings.

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.


CASE NOTES

The convening of a County Board of Education was within the definition of a “meeting” under § 30-4-20(d), thus requiring public notice to be given, where the matters on the agenda included (1) points of agreement and disagreement between the Board and a city planning committee; (2) a summary of research regarding school size; (3) operational costs at a city school as compared to other similar schools; and (4) rezoning and transporting students from the area, since the nature of the items on the agenda, together with the expressed intent to go over each piece of information necessarily entailed Board discussion of matters over which it had “supervision, control, jurisdiction or advisory power” involving the school. Braswell v Roche (1989) 299 SC 181, 383 SE2d 243.

Newspapers’ complaint because the city council took up matters not on the agenda while in executive session was without merit, since the act does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session, and, moreover, no prejudice resulted to the newspapers as a result of their not having an agenda for the meeting in advance of the meeting taking place. Herald Pub. Co. v Barnwell (1986, App) 291 SC 4, 351 SE2d 878.

ATTORNEY GENERAL’S OPINIONS

A public body must provide notice of all public meetings, whether scheduled, rescheduled, or called to local news media, persons, or organizations who may request to be notified. Generally, the public should be notified by the posting of a notice at the office or meeting place of the public body. 1989 Op Atty Gen, No. 89-111, p 298.

Proper notice for a regularly scheduled meeting should be given by written public notice at the beginning of the calendar year and include the date, time, place, and agenda; called, special, or rescheduled meetings require notice at least 24 hours in advance which is to include the date, time, and place; the Freedom of Information Act does not place responsibility on any entity to ensure that notification is received. 1989 Op Atty Gen, No. 89-111, p 298.

In absence of truly exigent circumstances, FOIA requires public body to give notice, in manner prescribed, of time, place, date and agenda of its meetings. Notice is to be given as far in advance of meeting as is practicable, but no less than 24 hours before meeting. 1984 Op Atty Gen, No. 84-20, p. 56.

Public body (legislative delegation) is
required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op Atty Gen, No. 84-111, p. 256.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non-disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case-by-case basis. 1984 Op Atty Gen, No. 84-125, p. 281.

Public notice as used in § 4-9-110 is the same term as used in 30-4-80, and public notice requirements should follow the notice provisions of the Freedom of Information Act. 1983 Op Atty Gen, No. 83-54, p. 102.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976-77 Op Atty Gen, No 77-243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976-77 Op Atty Gen, No 77-45, p 45.

1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976-77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976-77 Op Atty Gen, No 77-288, p 219.

§ 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
FREEDOM OF INFORMATION ACT § 30-4-90

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to § 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body shall not be required to furnish recording facilities or equipment.


CASE NOTES
1-5. [Reserved for future use. Please consult your supplement.]

6. Under former law
Newspaper was improperly denied access to jail log book and to meetings and minutes of meetings of local building commission. Florence Morning News, Inc. v Building Com. of Florence (SC) 218 SE2d 881.

ATTORNEY GENERAL’S OPINIONS

Under the Freedom of Information Act, recording a public meeting of a public body by means of a home video camera would be permitted, assuming that recording is done in a manner nondisruptive to the public meeting. Such recording of public figures would not violate their right of privacy since, by virtue of their public service, they have voluntarily placed themselves before the public and they have relinquished part of their rights of privacy. 1988 Op Atty Gen, No. 88-3, p 24.

Prior Attorney General's Opinion No. 77-279 concerning use of secret ballots to elect board officers is not clearly erroneous. 1984 Op Atty Gen, No. 84-4, p. 22.

Elections of Chief Commissioner, Secretary-Treasurer, Chairman and Vice-Chairman must be ratified in public session before their elections are effective. Because Chief Highway Commissioner is appointed officer of Commission, his selection could be made in executive session. Where member of public body asks that vote be recorded, secret ballot may not be taken. 1984 Op Atty Gen, No. 84-46, p. 109.

Tenure Committee of state college constitutes public body under Freedom of Information Act. Tenure Committee, in voting on particular individuals being granted ordinary tenure while in executive session has to consult college rules regulations and procedures to determine voting procedures. Committee must ratify in public session any formal action taken by body in executive session. Formal actions include decisions of tenure and denials of tenure. 1984 Op Atty Gen, No. 84-64, p. 159.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976-77 Op Atty Gen, No 77-45, p 45.

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§ 30-4-90  PUBLIC RECORDS

come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976-77 Op Att'y Gen, No 77-243, p 180.

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§ 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.


Research and Practice References—
66 Am Jur 2d, Records and Recording Laws § 31.
76 CJS, Records § 41.
Recovery of Attorneys' Fees as Costs or Damages in South Carolina. 38 SC L Rev 823.

Annotations—
Pro se litigant as entitled to award of attorneys' fees for value of his own services rendered in lawsuit under Freedom of Information Act (5 USCS § 552). 56 ALR Fed 573.

CASE NOTES

1. In general
2. Under former law

1. In general

Under § 30-4-100, the only prerequisite to an award of attorney fees and costs is that the party seeking relief must prevail, in whole or in part. Thus, where the plaintiffs prevailed on their request for declaratory relief, it was within the trial judge's discretion to award attorney fees and costs to the plaintiffs. Cockrell v Trustees of Dist. 20 Constituent School Dist. (1989) 299 SC 155, 382 SE2d 923.

In a consolidated action brought un-