



RICHLAND COUNTY COUNCIL RULES AND APPOINTMENTS

Jim Manning	Bill Malinowski, Chair	Gwendolyn Davis Kennedy
District 8	District 1	District 7

**JULY 24, 2012
5:00 PM**

4th Floor Conference Room

CALL TO ORDER

Approval Of Minutes

1. June 5, 2012 [PAGES 5-7]

Adoption Of Agenda

- 2.

Interviews

3. Accommodations Tax Committee-4 (needed 2 persons employed or have worked in Hospitality, 1 person employed or have worked in Lodging, and 1 person from a cultural industry): no applications were received at this time.
4. Appearance Commission-2 (needed, 1 licensed Horticulturalist and 1 licensed landscape architect); no applications were received at this time.
5. Building Codes Board of Adjustments-3 (needed 1 Architect, 1 licensed Electrician, and 1 person from the Fire Protection industry or employed in fields with extensive knowledge of fire codes and fire regulations); one application was received from Victor Snipes, a licensed electrician. **[PAGES 11-13]**
6. Business Service Center Appeals Board-3 (needed, 1 CPA, and 2 outside business persons); no applications were received.
7. Community Relations Council-1; one application was received from Eva Prioleau **[PAGES 15-17]**
8. East Richland Public Service Commission-1; one application was received for the position from William H. Hancock **[PAGES 18-20]**

Items For Action

9. Agendas-FOIA Compliance **[PAGES 22-32]**
10. That all items currently listed at the end of the A&F and D&S Committee agendas as "Items Pending Analysis" be cleared up within 90 days. There is no reason some action should not be taken, even if it means to table it for now **[MALINOWSKI] [PAGE 34]**
11. Reviewing Committee Qualifications **[PAGES 36]**

Discussion

12. Appearance Commission: **[MALINOWSKI]**
 - a. Determine what constitutes a quorum for the Appearance Commission and have the Ordinance reflect that.
 - b. Require all Council members appoint a representative to the Appearance Commission by the July 31, 2012 Council meeting.
13. Council Individual Discretionary Account

14. I move Council consider allowing Master Gardners to fulfill the roles of Landscaper and Horticulturalist on the Appearance commission, in the event that no licensed Landscaper of Horticulturalist can be recruited for the Commission. I also encourage all Council members to appoint their candidates to this Commission, and request staff inform Council vacancies [HUTCHINSON] [PAGES 38-43]

15. Due to recent issues with the Chair making announcements and having meetings on behalf of Richland County and County Council without Council's approval. I move that we have a workshop on the rules of the Chair. The do's and don'ts of the Chair. This will help with the problem and the chaos we are having on County Council. [JACKSON]

Adjournment



Richland County Council Request of Action

Subject

June 5, 2012 [PAGES 5-7]

Purpose

Minutes of



RICHLAND COUNTY COUNCIL RULES AND APPOINTMENTS COMMITTEE SPECIAL CALLED MEETING JUNE 5, 2012 5:00 PM

MEMBERS PRESENT:

Member Chair, Bill Malinowski
Member Gwendolyn Davis Kennedy
Member Jim Manning

ALSO PRESENT- Brad, Monique Walters

CALL TO ORDER

The meeting was called to order at approximately 5:02 p.m.

APPROVAL OF MINUTES

The minutes from May 1, 2012 were approved as submitted.

ADOPTION OF AGENDA

The agenda was renumbered so that the items were discussed in the order they were received, under Discussion. The agenda was adopted as amended.

INTERVIEWS

Accommodations Tax Committee-4 (2 persons employed or have worked in Hospitality, 1 person employed or have worked in Lodging, and 1 person from a cultural industry); no applications were received – the Committee recommended this item be re-advertised.

Appearance Commission-2 (licensed horticulturalist and 1 landscaper is needed) – the Committee recommended this item be re-advertised.

Board of Assessment Control-1; one application was received for one position from Fred C. Meetze, Jr. – after a brief interview the Committee recommended Mr. Meetze for appointment to the board.

Business Service Center Appeals Board-1 – the Committee recommended this item be re-advertised.

Employee Grievance Committee-1; one application was received fro the one position for Betty A. Etheredge – Ms. Etheredge was interviewed by the Committee and recommended for appointment to the Grievance Committee.

DISCUSSION

Council Member Individual Discretionary Account Motions – Mr. Manning restated his motion from the matrix to allow each Council member to roll over 10% of their unspent allocation to the next fiscal year by written request, signed by Administration. In the event that a Council member exceeds the expense account they shall be allowed to use up to the 10% from the last year’s allocation. In the event that a Council member spends beyond the 10% the overage must be repaid to the County by the close of business on the last day of August. If full payment is not received, the funds will be garnished, as allowed by statute, in equal amounts over the next three paychecks. In addition, Administration is to take steps to carry out the provisions of the motion; and the policy is to take effect with the inception of the FY-13 budget. The recommended this item be forwarded to Council with recommendation for approval.

That all items currently listed at the end of the A&F and D&S Committee agendas as “Items Pending Analysis” be cleared up within 90 days. There is no reason some action should not be taken, even if it means to table it for now [MALINOWSKI] – the Committee kept this item in Committee to receive language, and directed staff to move this item as an Item for Action at the next Committee meeting.

All committee items being sent to full council will not automatically be placed on the consent agenda but be listed as first reading items. The rationale is that only three persons could be present for the quorum and if all voted for the item it goes on the consent and this is only about 27% of council. [MALINOWSKI] – the Committee recommended this item be tabled.

Reviewing Committee Qualifications – upon receiving information that the Internal Audit Committee only meets when directed by Council, the Committee directed staff to come up with language recommending the Audit Committee meet every six months, or semi-annually to give a summary or report. This item was kept in Committee for language to be drafted.

Add to Section 4.1 of Council Rules: “No standing committees of Council shall be scheduled at the same time.” – There was no action taken on this item, so this item was kept in Committee to bring back for discussion at the next Committee meeting.

ADJOURNMENT

The meeting adjourned at approximately 5:52 pm.

Minutes transcribed by Monique Walters

Richland County Council Request of Action

Subject

Purpose

Item# 2

Richland County Council Request of Action

Subject

Accommodations Tax Committee-4 (needed 2 persons employed or have worked in Hospitality, 1 person employed or have worked in Lodging, and 1 person from a cultural industry): no applications were received at this time.

Purpose

Richland County Council Request of Action

Subject

Appearance Commission-2 (needed, 1 licensed Horticulturalist and 1 licensed landscape architect); no applications were received at this time.

Purpose

Richland County Council Request of Action

Subject

Building Codes Board of Adjustments-3 (needed 1 Architect, 1 licensed Electrician, and 1 person from the Fire Protection industry or employed in fields with extensive knowledge of fire codes and fire regulations); one application was received from Victor Snipes, a licensed electrician. **[PAGES 11-13]**

Purpose



**APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION**

Applicant must reside in Richland County.

Name: VICTOR SNIPES

Home Address: PO BOX 5252 COLUMBIA, SC 29250

Telephone: (home) 803-530-2400 (work) 803-252-4140

Office Address: 906 S EDISTO AVE

Email Address: ves33@sc.rr.com

Educational Background: HIGH SCHOOL

Professional Background: ELECTRICAL CONTRACTOR

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: BUILDING CODES BOARD OF ADJUSTMENT

Reason for interest: TO HELP WITH OUR INDUSTRY

Your characteristics/qualifications, which would be an asset to Committee, Board or
Commission:

I HAVE BEEN A BUSINESS OWNER FOR 28 YEARS WORKING IN THE BUILDING
INDUSTRY

Presently serve on any County Committee, Board or Commission? NO

Any other information you wish to give? _____

Recommended by Council Member(s): DONNY PHIPPS

Hours willing to commit each month: WHAT EVER IT TAKES

CONFLICT OF INTEREST POLICY

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.

Yes _____ No X _____

STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes _____ No X _____

If so, describe: _____

 _____ 6/14/2012
Applicant's Signature Date

**Return to:
Clerk of Council, Post Office Box 192, Columbia, SC 29202.
For information, call 576-2060.**

One form must be submitted for each Committee, Board or Commission on which you wish to serve.

Applications are current for one year.

Staff Use Only	
Date Received: _____	Received by: _____
Date Sent to Council: _____	
Status of Application:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file

2

Richland County Council Request of Action

Subject

Business Service Center Appeals Board-3 (needed, 1 CPA, and 2 outside business persons); no applications were received.

Purpose

Richland County Council Request of Action

Subject

Community Relations Council-1; one application was received from Eva Prioleau [**PAGES 15-17**]

Purpose



**APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION**

Applicant must reside in Richland County.

Name: Eva Prioleau
Home Address: 216 Fox Meadow Lane, Hopkins SC 29061
Telephone: (home) 803-795-4990 (work) 803-576-2433
Office Address: 400 Powell Road, Columbia SC 29203
Email Address: prioleau@rcgov.us
Educational Background: Master of Business Administration
Professional Background: Finance

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Community Relations Council

Reason for interest: To promote better community relations and respect for cultural diversity between all residents.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

With my education and experience, I will maintain loyalty; offer honest and constructive feedback to improve community relations.

Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? Served 2 terms on grievance committee

Recommended by Council Member(s): No

Hours willing to commit each month: 20 hours

CONFLICT OF INTEREST POLICY

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All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.

Yes _____ No _____

STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes _____ No _____

If so, describe: _____


Applicant's Signature

7/2/12
Date

**Return to:
Clerk of Council, Post Office Box 192, Columbia, SC 29202.
For information, call 576-2060.**

One form must be submitted for each Committee, Board or Commission on which you wish to serve.

Applications are current for one year.

Staff Use Only	
Date Received: _____	Received by: _____
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	Item# 7

2

Richland County Council Request of Action

Subject

East Richland Public Service Commission-1; one application was received for the position from William H. Hancock
[PAGES 18-20]

Purpose



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Applicant must reside in Richland County.

Name: WILLIAM H. HANCOCK
Home Address: 3746 ROCKBRIDGE ROAD, COLUMBIA, SC 29206
Telephone: (home) 803 787 8413 (work) 803 739 3090
Office Address: P.O. BOX 5949, WEST COLUMBIA, SC 29171
Email Address: whancock @ bbphcpa.com
Educational Background: B.S. BUSINESS ADMINISTRATION, MAJOR: ACCOUNTING, THE CITADEL
Professional Background: PRACTISING CPA - AUDITOR / BUDGET CONSULTANT
Male Female Age: 18-25 26-50 Over 50 -
Name of Committee in which interested: EAST RICHLAND PUBLIC SERVICE DISTRICT
Reason for interest: PUBLIC SERVICE

Your characteristics/qualifications, which would be an asset to Committee, Board or
Commission:

AUDITOR OF LOCAL GOVERNMENTS, CPA WITH FINANCE BACKGROUND

Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? _____

Recommended by Council Member(s): _____

Hours willing to commit each month: 20+

CONFLICT OF INTEREST POLICY

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.

Yes _____ No X _____

STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes _____ No X _____

If so, describe: _____

William A. Hamrick
Applicant's Signature

6/27/2012
Date

Return to:
Clerk of Council, Post Office Box 192, Columbia, SC 29202.
For information, call 576-2060.

One form must be submitted for each Committee, Board or Commission on which you wish to serve.

Applications are current for one year.

Staff Use Only	
Date Received: _____	Received by: _____
Date Sent to Council: _____	
Status of Application:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file

Item# 8

Richland County Council Request of Action

Subject

Agendas-FOIA Compliance [**PAGES 22-32**]

Purpose

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dennis N. Lambries, Appellant,

v.

Saluda County Council; T.
Hardee Horne, Chairman;
William "Billie" Pugh,
Councilman; Steve Teer,
Councilman; Jacob Schumpert,
Councilman; and James Frank
Daniel, Sr., Councilman, Respondents.

Appeal From Saluda County
William P. Keesley, Circuit Court Judge

Opinion No. 4989
Heard March 15, 2012 – Filed June 13, 2012

REVERSED

Richard R. Gleissner, of Columbia, for Appellant.

Christian Giresi Spradley, of Saluda, for
Respondents.

KONDUROS, J.: Dennis Lambries appeals the circuit court's ruling that the amendment of the agenda by the Saluda County Council (the Council) during its meetings does not violate the Freedom of Information Act (FOIA). We reverse.

FACTS

Lambries filed suit against the Council contending its practice of amending its agenda during regularly scheduled meetings violated FOIA. The circuit court concluded specific language in section 30-4-80 of the South Carolina Code (2007) indicated no agenda was required for regularly scheduled meetings and the amendments to the agenda were made in open public sessions in accordance with the Council's procedures so the action did not violate FOIA.¹ This appeal followed.

STANDARD OF REVIEW

"Statutory interpretation is a question of law." Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007). This court may decide matters of law with no particular deference to the circuit court. Pressley v. REA Constr. Co., 374 S.C. 283, 287-88, 648 S.E.2d 301, 303 (Ct. App. 2007).

LAW/ANALYSIS

Lambries argues the circuit court's interpretation of section 30-4-80 of the South Carolina Code (2007) was erroneous because it undercuts the purpose of FOIA to inform the public about business to be addressed at meetings of public bodies. We agree.

¹ Lambries initially requested that certain acts of the Council be declared null and void, but he abandoned those claims and seeks only an interpretation of FOIA that will prevent the Council from amending its agenda during meetings in the future.

Section 30-4-80 provides:

(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.

....

(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.

Section 30-4-15 of the South Carolina Code (2007) discusses the purpose of FOIA.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Id. (emphasis added).

The circuit court determined the "if any" language in section 30-40-80(a) means that nothing requires Council to have an agenda for a regularly scheduled meeting. However, this interpretation is inconsistent with the requirement that agendas be posted twenty-four hours prior to a meeting. Applying such a construction, Council could circumvent the notice requirement by simply not preparing a formal agenda and then discussing matters on an ad hoc basis at the meeting. Such conduct would not be in keeping with the purpose of FOIA, and we will not construe a statute in a way that defeats the legislative intent. See Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006) ("A statute as a whole must receive [a] practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers."); Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (stating courts will reject the ordinary meaning of words if accepting such an interpretation of a statute leads to an absurd result that would defeat the plain legislative intention.); id. ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect."). Additionally, if as Council argues no agenda is required because regularly scheduled meetings are open to the public, then the publication requirement when there is an agenda is superfluous. Meetings with or without an agenda are equally open to the public.

However, if "agenda"² is not viewed narrowly as only a formally prepared piece of paper but instead represents the impactful actions and business the paper memorializes, the statute can be read harmoniously. Then, the "if any" language simply recognizes that regularly scheduled meetings of public bodies may occur during which no formal action or discussion is to take place. If so, there is no agenda and no requirement for publication of a blank piece of paper.

The remainder of subsection (a) requires publication of the agenda for any called or special meeting. By implication, a called or special meeting would only occur if an item required formal discussion or action. This interpretation of the statute gives logical effect and meaning to each part of the statute and is in accord with the purpose of FOIA to notify the public of the activities of public bodies.

The remaining question is whether a published agenda for a regularly scheduled meeting can be amended during the meeting without violating FOIA. This is a close question, because no provision appears to prohibit such action. However, to allow an amendment of the agenda regarding substantive public matters undercuts the purpose of the notice requirement in section 30-4-80. A narrow construction of FOIA may support the position that so long as regularly scheduled meetings are open to the public, they are conducted in compliance with FOIA. However, such a construction would be inconsonant with the agenda notice requirement for regularly scheduled meetings and would go against the instruction that FOIA is to be liberally construed. See N.Y. Times Co. v. Spartanburg Cnty. Sch. Dist. No. 7, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007) (stating FOIA is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the legislature); Evening Post Publ'g Co. v. City of N. Charleston, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (holding FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government).

While Lambries does not argue Council's deeds have been done with ill intent, permitting the amendments to the agenda during a regularly

² Agenda is not defined in FOIA.

scheduled meeting is a practice that could be abused and violates the spirit of FOIA. A South Carolina Attorney General opinion, while not authoritative, eloquently describes the ideal conduct for meeting the obligations set forth under FOIA.

Public bodies are encouraged to take all steps necessary to comply with both the letter and the spirit of the Act, to carry out the express purpose of keeping the public informed about the performance of their public officials and the conduct of public business. If any doubt exists as to action to be taken, the doubt should be resolved in a manner designed to promote openness and greater notice to the public.

1989 S.C. Op. Att'y Gen. 89-111, 1989 WL 406201 (October 11, 1989).

We recognize our decision may be inconvenient in some instances, but the purpose of FOIA is best served by prohibiting public bodies governed by FOIA from amending their agendas during meetings. Therefore, the ruling of the circuit court is

REVERSED.

GEATHERS, J., concurs.

PIEPER, J., dissents in a separate opinion.

PIEPER, J., dissenting:

I respectfully dissent. The majority opinion is well-reasoned and compelling. However, I am reluctant to reverse the denial of temporary injunctive relief by the trial court because the statute is completely silent as to whether a public body can amend an agenda that is not required for a regularly scheduled meeting. "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). "[I]t is vital in a democratic

society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity" S.C. Code Ann. § 30-4-15 (2007). FOIA must be construed to make it possible for citizens to learn and report fully the activities of public officials. Id. Section 30-4-80 of the South Carolina Code provides the following:

- (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.

S.C. Code Ann. § 30-4-80 (2007).

Section 30-4-80 is completely silent as to whether an amendment to a published agenda for a regularly scheduled meeting is permitted. What is clear is that an agenda is not required for a regularly scheduled meeting, as indicated by the "if any" language in the statute. See S.C. Code Ann. § 30-4-80 (2007) ("Agenda, if any, for regularly scheduled meetings"). Because an agenda is not required for a regularly scheduled meeting, it is difficult to conclude that the statute's silence clearly demonstrates legislative intent to prohibit a public body from amending a discretionary agenda. Additionally, Council's amendment of the agenda did not violate FOIA's

purpose of providing the public access to a public body's actions behind closed doors. Council's amendment of the agenda did not infringe on Lambries' ability to learn and report fully on the activities of the public officials. While the public was not informed of the amendment to the agenda, the meeting was performed in an open and public manner, and the public was advised of both the meeting and the decisions reached at the meeting.

Moreover, because a FOIA violation can be criminal in nature, the law should be clear as to what is proscribed; otherwise, unintended prosecutions could be threatened. See S.C. Code Ann. § 30-4-110 (2007) ("Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense . . ."). Until the legislature resolves this issue, I would not judicially impose requirements that would have the effect of creating new and potentially unintended criminal liability. Furthermore, in light of the admitted lack of legislative clarity on this issue, I would alternatively affirm the trial court's denial of Lambries' temporary injunction, as the decision to grant or deny an injunction is within the discretion of the trial court. See Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("An order granting or denying an injunction is reviewed for abuse of discretion."). Based on the foregoing reasons, I would affirm the order of the trial court.

MONIQUE WALTERS

From: BRAD FARRAR
Sent: Monday, June 18, 2012 11:22 AM
To: Kelvin Washington; Gregory Pearce; Joyce Dickerson; Val Hutchinson; Norman Jackson; Damon Jeter; Gwendolyn Kennedy; Paul Livingston; Bill Malinowski; Jim Manning; Seth Rose
Cc: MILTON POPE; TONY MCDONALD; Sparty Hammett; ROXANNE ANCHETA; Randy Cherry; Michelle Onley; MONIQUE WALTERS; LARRY SMITH; ELIZABETH MCLEAN; Tish Garnett; Marnyka Buttry; STEPHANY SNOWDEN; Tracy Hegler; AMELIA LINDER; GEO PRICE; SUZIE HAYNES
Subject: RE: Court of Appeals -- Amending Council's Agenda [1 Attachment]
Attachments: Court Of Appeals -- Amending An Agenda (2).pdf

To All,

This morning Chairman Washington and I discussed the need to get in front of this issue and minimize the possibility of any Richland County official, employee or volunteer board or committee member running afoul of the attached Court of Appeals' decision issued last week. Following up on that ruling, the South Carolina Association of Counties posted an article on "Amending Council Agendas," accessible at this link:

<http://www.sccounties.org/legislation/bulletins/2012.aspx>

SCAC's conclusion on this subject is that, "SCAC legal staff will continue to monitor the case upon appeal to the Supreme Court and update county officials on new developments. In the meantime, County Councils are advised to refrain from amending agendas during regularly scheduled meetings."

Based on this significant Court of Appeals decision, I note the following.

First, how to address this issue right now. S.C.Code Ann. Section 30-4-80, "Notice of meetings of public bodies," provides in part:

(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.

This ruling may have made it "impracticable" to post an agenda of a public body any sooner than the deadline of "twenty-four hours prior to" whatever meeting is at issue in the event Council or any of its members would like to amend, change or tweak anything on the agenda. Since the Court of Appeals ruled that amending an agenda at a meeting violates the Freedom of Information Act (FOIA), and if willful violations of the FOIA can result in criminal sanctions, while the "shell" or majority of a public body's agenda may be prepared as soon as possible, Council may want to consider that final changes, amendments or tweaks thereto be made up until the deadline of 24-hours before the meeting. This, then, could result in the public body's agendas not being posted until 24-hours before its meetings, which does comply with FOIA and would allow amendments to be made within as short a time before the scheduled meeting as possible while still complying with this court ruling.

I would suggest that Council and all boards, commissions, etc., that have agendas refer to them as "Working Agendas" until posting the final agenda 24-hours before the scheduled meeting, especially for public bodies that regularly amend their agendas.

As a practical matter, however, the Clerk's Office will need time to ensure that any requested amendments are made, that the agenda may be finalized and that IT can assist if there are any glitches. As such, the deadline likely still could be the day before Council meets, but not exactly 24-hours prior to the start of the meeting.

Item# 9

I will ask that the Clerk's Office issue whatever deadline they may need to do the administrative and logistical things in order to prepare and post the agenda.

For any citizens or Council members who prefer hard copies of agendas instead of electronic notice, the County may also need to look at ways to get final agendas to those impacted by this Court decision.

Finally, to address this issue for the long term, Council may want to refer this situation to the Rules and Appointments Committee to propose language in Council's rules to address this Court of Appeals' decision.

I can provide further guidance or answer any questions from Council, staff, boards, committees, etc., as needed. Thank you.

V/r

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2020 Hampton Street, Room 4018
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ATTORNEY-CLIENT OR OTHER PRIVILEGED COMMUNICATION NOT FOR DISSEMINATION BEYOND ORIGINAL ADDRESSEE(S) AND ORIGINAL COPIED RECIPIENT(S).

From: BRAD FARRAR

Sent: Thursday, June 14, 2012 3:27 PM

To: Kelvin Washington; Gregory Pearce; Joyce Dickerson; Val Hutchinson; Norman Jackson; Damon Jeter; Gwendolyn Kennedy; Paul Livingston; Bill Malinowski; Jim Manning; Seth Rose

Cc: MILTON POPE; TONY MCDONALD; Sparty Hammett; ROXANNE ANCHETA; Randy Cherry; Michelle Onley; MONIQUE WALTERS; LARRY SMITH; ELIZABETH MCLEAN; Tish Garnett; Marnyka Buttry; STEPHANY SNOWDEN

Subject: Court of Appeals -- Amending Council's Agenda [1 Attachment]

To All,

The attached SC Court of Appeals decision involving Saluda County was issued on June 13, 2012. It involves amending agendas of public bodies.

The opinion basically holds that amending public body meeting agendas violates the Freedom of Information Act (FOIA). No kidding, that's what it entails.

I would suggest that everyone read this opinion, especially the dissent from Judge Pieper, as there literally are possible criminal consequences for willful violations of the FOIA. The opinion has implications for any public body or entity, from County Council to volunteer boards and commissions. This opinion is being widely circulated among the counties. I would suggest also that you consider contact SCAC and the legislative delegation to inquire about the ramifications of this decision, and how to go about legislatively addressing it as soon as possible.

Finally, as to staff, I would suggest that you forward this information to departments that in particular have boards, commissions or public bodies that meet and have agendas (Planning, for example, which works with BOZA, PC, etc.), so they may be aware of this situation.

I prepared a very lengthy response for my colleagues on an Internet "chat room" for county attorneys that I sent today. I won't saddle you with that long message, but I can forward you a copy if anyone is interested, as it goes into great detail about my thoughts, for what they're worth, on the scope of this decision.

Item# 9

Please contact me if you have any questions or need more information. Thank you.

V/r

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Richland County Council Request of Action

Subject

That all items currently listed at the end of the A&F and D&S Committee agendas as "Items Pending Analysis" be cleared up within 90 days. There is no reason some action should not be taken, even if it means to table it for now
[MALINOWSKI] [PAGE 34]

Purpose

Items kept in Pending Analysis beyond 90 days

- 2) Any item defeated, tabled, or not acted on by committee within 90 days of that item that item having been placed on the committee's agenda may be placed on the Council agenda when the Clerk's Office has received a written request signed by three members of Council,

Amendment:

b. Any item listed on the A&F and D&S Committee agendas under "Pending Items" that have not received action for 100 days shall be moved from "Items Pending Analysis" section to the "Items for Action" section. Actions that could be taken on these items are directing staff to "do" something with an item, such as negotiate, staff or representative to provide a report or summary of information, and/or tabling the item.

Richland County Council Request of Action

Subject

Reviewing Committee Qualifications [**PAGES 36**]

Purpose

Additional Language for the Internal Audit Committee

Members of Internal Audit Committee the will meet every six months to analyze the health of the day to day running of the departments that make up Richland County Government. The report shall consist of a summary that is to be reported out to County Council at a determined date.

Richland County Council Request of Action

Subject

Appearance Commission: **[MALINOWSKI]**

- a. Determine what constitutes a quorum for the Appearance Commission and have the Ordinance reflect that.
- b. Require all Council members appoint a representative to the Appearance Commission by the July 31, 2012 Council meeting.

Purpose

Richland County Council Request of Action

Subject

Council Individual Discretionary Account

Purpose

Richland County Council Request of Action

Subject

I move Council consider allowing Master Gardeners to fulfill the roles of Landscaper and Horticulturalist on the Appearance commission, in the event that no licensed Landscaper or Horticulturalist can be recruited for the Commission. I also encourage all Council members to appoint their candidates to this Commission, and request staff inform Council vacancies **[HUTCHINSON] [PAGES 38-43]**

Purpose

APPEARANCE COMMISSION

The Richland County Appearance Commission will seek to improve and enhance the overall appearance of Richland County. The Commission, appointed in whole by Council, shall consists of at least eleven (11) members; at least one member who is a landscape architect and one member who is a horticulturist; and the other members being interested citizens residing in the county. Members shall serve a term of four (4) years or until his of her successor is appointed. Appropriate representatives from the South Carolina Department of Transportation, City of Columbia and Richland County will serve as an ex-officio member.

	<u>District</u>	<u>Member</u>	<u>Expiration</u>
1	Malinowski	Kim Murphy	Concurrent
2	Dickerson		*
3	Jeter		*
4	Livingston		*
5	Rose	Carla Lewis Moore	*
6	Pearce		*
7	Kennedy	Jim Davis	*
8	Manning	Lee Phippen	*
9	Hutchinson	Mary Jane Henderson	*
10	Washington		*
11	Jackson	Angela Geiger	*

Other Members:
Horticulturist (Vacant)
Landscape Architect (Vacant)

APPEARANCE COMMISSION

The Richland County Appearance Commission will seek to improve and enhance the overall appearance of Richland County. The Commission, appointed in whole by Council, shall consist of at least eleven (11) members: at least one member who is a landscape architect and one member who is a horticulturist; and the other members being interested citizens residing in the county. Members shall serve a term of four (4) years or until his or her successor is appointed. Appropriate representatives from the South Carolina Department of Transportation, City of Columbia, and Richland County will serve as an ex-officio member.

District 1

Kim Murphy, *Chair*
154 Old Laurel Lane
Chapin, SC 29036
345-8855 (H)
12/31/14

District 2 (Vacant)

Betty Robinson
1916 Spotswood
Columbia, SC 29210
(H)
12/31/08

District 3 (Vacant)

William A. Niblock
4011 Highland Park Drive
Columbia, SC 29204
754-4429
12/31/08

District 4 (Vacant)

Betsy L. Boozer
2304 Lincoln Street
Columbia, SC 29201
779-7595 (H)
Retired (O)
12/31/14

District 5

Carla Lewis Moore
2300 Wilmot Ave
Columbia, SC 29205
(H) 770-0124
c-l-moore@att.net
12/31/14

District 6 (Vacant)

Ms. Arney Love
3 Cedarwood Lane
Columbia, SC 29205
256-1196
12/31/10

District 7

Jim Davis
120 Swandale Dr.
Columbia, SC 29203
(C) 318-1136
4/10/12

District 8

Lee Phippen
4230 Sandwood Drive
Columbia, SC 29205
(H) 738-0865
npippen@sc.rr.com
12/31/12

District 9
Mary Jane Henderson
19 Stagbriar Court
Columbia, SC 29229
736-0176
917-8670

District 10 (Vacant)
Susan R. Harris
2509 Flamingo Drive
Columbia, SC 29209
783-0130
12/31/12

District 11
Angela Geiger
405 N. Maney Ct.
Hopkins, SC 29061
776-6436 (H)
333-6104 (O)
12/31/14

Contact: James “Buddy” Atkins
RC Conservation Department
576-2080

Council Liaison:

Others Members:
James E. Storzier, Horticulturist (Resigned)
315 Kilbourne Rd. (Dist 5)
Columbia, SC 29205
(H) (706) 621-9947
(O) 978-1048
jstorzier@riverbanks.org
4/6/10-4/6/13

Landscape Architect
(Vacant)

Citizen Liaisons:

(i) *Richland County Appearance Commission.*

- (1) *Creation.* There is hereby created a Richland County Appearance Commission, which shall be a permanent county commission, appointed in whole by county council.
- (2) *Membership.* The Richland County Appearance Commission shall consist of at least 11 members who are individually appointed by the representing councilperson to represent each council district. Additionally, two members shall be appointed at-large by majority vote of the full council, for a maximum number of 13 commission members. At least one member of the commission must be a landscape architect and one member must be a horticulturist; and the other members being interested citizens residing in Richland County. Appropriate representatives from the South Carolina Department of Transportation, City of Columbia, and the county will serve as ex-officio members.
- (3) *Purpose.* The Richland County Appearance Commission will seek to improve and enhance the overall appearance of Richland County. Responsibilities include:
 - a. To identify and work with municipalities, state agencies, and interested organizations to coordinate and collaborate in improving the appearance of Richland County.
 - b. To make a recommendation to the county council, no later than June 1, 1999, as to the implementation of the Landscaping Investment and Major Boulevards Plan (LIMB) approved by county council.
 - c. To undertake the development and implementation of a five-year overall beautification plan to complement and expand upon the LIMB Plan. This five-year plan will address long-term efforts to improve the appearance and natural beauty of the county and will include appearance standards and principles.
 - d. To develop a maintenance plan for the above LIMB Plan and five-year plan.
 - e. To identify outside public and/or private funding sources for beautification and recommend to council grant opportunities and if needed, county funding, for the beautification efforts.
- (4) *Terms of members: election of officers; and meetings.*
 - a. An at-large Commission member shall serve a term of four years or until his or her successor is appointed. The term of a member of the

Commission individually appointed by a Council member shall be coterminous with the term of the appointing Council member. Provided, however, that if a vacancy shall occur on Council, the member of the Commission appointed by the vacating Council member shall complete his or her term.

- b. The commission shall elect a chairman, vice-chairman, secretary and treasurer.
 - c. The commission shall meet at such times and places as determined by the chairman, but shall hold at least one meeting each quarter. The county administrator shall assign staff to assist the commission in making its recommendations to county council. All meeting of the commission shall be conducted in compliance with the South Carolina Freedom of Information Act.
- (5) *By-laws*. The commission shall adopt by-laws by which meetings and activities of the commission will be conducted. Such by-laws shall not conflict with Robert's Rules of Order, the general and permanent statutes of the State of South Carolina, and Richland County ordinances.

Richland County Council Request of Action

Subject

Due to recent issues with the Chair making announcements and having meetings on behalf of Richland County and County Council without Council's approval. I move that we have a workshop on the rules of the Chair. The do's and don'ts of the Chair. This will help with the problem and the chaos we are having on County Council. **[JACKSON]**

Purpose