



Minutes/June 10, 2019

The Board of Trustees of School District Five of Lexington and Richland Counties met at The Center for Advanced Technical Studies with the following members present:

Mr. Robert Gantt, Chairman  
Ms. Beth Hutchison, Vice Chairman  
Mr. Michael Cates, Secretary  
Mrs. Nikki Gardner  
Mrs. Jan Hammond (via Skype)  
Mr. Ken Loveless  
Mr. Ed White  
Dr. Christina Melton, District Superintendent

The following staff were in attendance:

Mrs. Katrina Goggins, Director, Office of Communications  
Mr. Michael Guliano, Chief Instructional Officer  
Dr. Michael Harris, Chief Planning and Administrative Officer  
Dr. Allison Jacques, Chief Human Resources Officer  
Mr. Len Richardson, Chief Finance Officer

Chairman Gantt called the meeting to order.

The Invocation was given by Robert Gantt, Board of Trustees. The Pledge of Allegiance was led by Laura Katherine Perla, a student at Chapin Middle School.

The Board conducted the School Board Spotlight.

During the Superintendent's Report, Dr. Harris presented a Fall Athletics Report.

No one spoke during public participation.

SCHOOL DISTRICT FIVE  
OF  
LEXINGTON AND RICHLAND COUNTIES

Meeting of June 10, 2019

		C A T E S	G A N T T	G A R D N E R	H A M M O N D	H U T C H I S O N	L O V E L E S S	W H I T E
1.	M. Hutchison S. Cates  Approve the agenda  M. Loveless S. Hammond  Because the inclusion of item 3c from the above agenda is in my opinion is contrary to the SC Code of Laws and case law rulings of the SC Supreme Court, I make the motion that the item 3c be removed from the Executive Session agenda and be moved to the Discussion Agenda of this meeting. See the attachment « <u>South Carolina state code sections authoring executive session (Freedom of Information Act-Section 30-4-70) and FOIA Update : Executive Sessions Municipal Association of South Carolina June 2015 »</u>  Vote on original motion	No	No	X	X	No	X	No
		X	X	X	X	X	X	X
2.	M. Hutchison S. Cates  Enter executive session to consider the following : a) selected employment items (Exhibit A) ; b) receipt of legal advice and discussion of the status of Civil Action No. 2013-CP-40-01897 ; c) receipt of legal advice regarding management of real property inventory owned by the school district ; and d) receipt of legal advice regarding potential professional services contract procurement	X	X	X	X	X	X	X
3.	M. Hutchison S. Loveless  Approve the minutes of the May 20, 2019 board meeting	X	X	AB	A	X	X	X
4.	M. Hutchison S. Loveless  Re-enter executive session to consider item 3d) receipt of legal advice regarding potential professional services contract procurement	X	X	X	A	X	X	X
5.	M. Cates S. Gardner  Approve the selected employment items (Exhibit A)	X	X	X	X	X	X	X

A = Absent  
AB = Abstain  
N = No  
X = Yes  
R = Recuse

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6. M. Hutchison                      S. Loveless  The Board authorize its legal counsel to continue settlement discussions regarding the District's counterclaims against Kim Murphy in the case Kim Murphy v. Richland Lexington School District 5, consistent with the Board's discussion in executive session	X	X	X	X	X	X	X
7. M. Gardner                              S. Cates  We authorize the administration to proceed to address the legal issues raised regarding management of the district's real property inventory and report to the Board at such time as the legal questions are resolved	X	X	X	X	X	X	X
8. M. Hutchison                              S. Cates  Second and final reading of proposed revisions to board policy JHCB « Released Time For Religious Instruction » (Exhibit B)	X	X	X	X	X	X	X
9. M. Cates                                      S. Loveless  Second and final reading of proposed revisions to board policy EBCB "Safety Drills" (Exhibit C)	X	X	X	X	X	X	X
10. M. White                                      S. Cates  Adjourn at 8:41 p.m.	X	X	X	X	X	X	X

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June 10, 2019

MOTION TO AMEND THE AGENDA TO DELETE ITEM 3c from the Executive Session agenda and place it under Discussion Agenda for this meeting. To be presented before board enters Executive Session.

RE: School Board Meeting of June 10, 2019... Agenda **Item 3 c. Receipt of legal advice regarding management of real property inventory owned by the school district**

Mr. Chairman,

I make the following motion:

"Because the inclusion of Item 3c from the above agenda is in my opinion is contrary to the SC Code of Laws and case law rulings of the SC Supreme Court, I make the motion that the item 3c be removed from the Executive Session agenda and be moved to the Discussion Agenda of this meeting. See the attachment "South Carolina state code sections authoring executive session (Freedom of Information Act-Section 30-4-70) and FOIA Update: Executive Sessions Municipal Association of South Carolina June 2015".

Respectfully submitted,

  
Kenneth B. Loveless, Trustee

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## South Carolina state code sections authorizing executive session (Freedom of Information Act - *Section 30-4-70*)

**SECTION 30-4-70 (a)** A public body may hold a meeting closed to the public for one or more of the following reasons:

### **Section 30-4-70 (a) (1)**

Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing. *(The identity of the individual or entity being discussed is not required to be disclosed)*

### **Section 30-4-70 (a) (2)**

Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

### **Section 30-4-70 (a) (3)**

Discussion regarding the development of security personnel or devices.

### **Section 30-4-70 (a) (4)**

Investigative proceedings regarding allegations of criminal misconduct.

### **Section 30-4-70 (a) (5)**

Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body. *(The identity of the individual or entity being discussed is not required to be disclosed.)*

### **Section 30-4-70 (b)**

Before going into executive session, the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session.

# FOIA Update: Executive Sessions

(June 2015)



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## Executive Session Requirements (resulting from *Donohue v City of North Augusta* June 2015)

The South Carolina Supreme Court held in the 2015 case of *Donohue v City of North Augusta* that a public body describing the purpose of an executive session as a "proposed contractual matter" is not specific enough to comply with the Freedom of Information Act when entering executive session pursuant to SC Code Section 30-4-70 (a) (2).

The Court noted that Section 30-4-70 (a) (2007) allows a public body to hold a closed meeting for any one of five reasons, provided that its "specific purpose" is announced in the open session (see back page).

As provided in Section 30-4-7 (b), "specific purpose" is defined as:

"a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70 (a) (1) or 30-4-70 (a) (5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated."

The Court observed that, during the council meetings at issue, city council did not invoke either Section 30-4-70 (a) (1) or (a) (5), the two subsections that specifically allow the identity of the individual or entity to be withheld. Rather, in each of the 11 executive sessions challenged by *Donohue*, the minutes reflect council invoked only Section 30-4-70 (a) (2) and merely stated that the specific purpose of the meeting was to be a "contractual matter." As such, the court determined that council had failed to satisfy the "specific purpose" requirement.

Although the Court's analysis confirms a distinction between what is required when going into closed session pursuant to (a) (1) or (a) (5) as opposed to the requirements when going into closed session pursuant to (a) (2) through (a) (4), it did not provide details regarding what council should include in its announcement before going into executive session under one as opposed to the other.

Due to the fact there are still many questions outstanding after this Court ruling, councils should discuss any questions regarding executive session with their city attorney. The Municipal Association will continue engaging with local government organizations, the SC Press Association, municipal attorneys and attorneys specializing in matters related to the Freedom of Information Act to determine whether more specific guidance is needed.