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Officials free to speak openly about what happens in closed government meetings

Free speech rights not lost upon election to public office

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Do public officials give up their rights of free speech when they win elected office?

From time to time, elected officials such as city council members, county commissioners, school board members, or appointed members of the boards of government authorities will receive advice from someone (usually a lawyer representing the public entity) that the public official may not disclose information learned in a closed session.

Such advice has no basis in fact or in law. Elected officials are subject only to the voters, and may not be disciplined or discharged from office by their fellow elected members. Members of the boards of authorities, while appointed by city or county governments, usually are entitled to serve the entire term without removal authority remaining vested with the city or the county who made the appointment. See, Hernandez v. Development Authority of the City of St. Marys, Georgia, 256 Ga. 356 (1986).

Some may ask, "What about the provisions in the Georgia Code that establish standards of ethics for government service or for members of boards, commissions and authorities?" O.C.G.A. 45-10-3 contains a Code of Ethics for members of boards, commissions and authorities. It has provisions against the use of undisclosed public information for private gain, and against engaging in unbecoming conduct that constitutes a breach of public trust.

None of its various provisions, however, would prevent elected or appointed officials from disclosing what occurred in a closed session if the official felt that it was in the public interest to make the disclosure.

O.C.G.A. 45-10-1 is similar in many respects and applies to any person involved in government service. Some of its provisions are that the person in government service should put his/her loyalty to the highest moral principles and to country above loyalty to persons, party or government department, and an obligation to uphold the Constitution, laws and regulations of the state and the United States and of the governmental units therein. It also has prohibitions against using government information for private gain.

None of its provisions would prohibit an elected or appointed member from disclosing what occurred in an executive session if the member felt it was in the public interest to do so.

Finally, the overriding constitutional principle for public service in Georgia is contained in Article I, Section II, Paragraph I of the Georgia Constitution. It states: "Public officers are trustees and servants of the people and are at all times amenable to them." Thus, if the public officer learns of something that occurs in a closed session that he or she believes should be known by the people to whom the public officer is a servant, there is no prohibition in Georgia law that would prevent such disclosure or subject the public officer to any measure of discipline.

The officer may create ill will with other members of the public agency, but that is a factor that the public officer will have to weigh against what he or she feels is an overriding duty to the public that he or she serves.