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86-313
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Wilson Stiles
State Historic Preservation Officer
Suite 200 Heritage Center East
225 East Markham
Little Rock, AR 72201

Dear Mr. Stiles:

This letter is in response to your request for an official opinion regarding the Arkansas Historic Preservation Program's position in relation to the Arkansas Freedom of Information Act as it applies to the quarterly meetings of the State Review Committee for Historic Preservation.

The Arkansas Freedom of Information Act, Act 93 of 1967, as amended, is codified at Ark. Stat. Ann. §12-2801, et seq. Section 2 of that act provides:

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be informed of the performance of public officials and of the decisions that are reached in public activity and in making public policy.

The legislature decided to carry out this public policy by addressing two primary facets of governmental activity. The first facet is "public records" which are defined at Ark. Stat. Ann. §12-2803. The legislature specifically determined that the site files and records maintained by the Arkansas Historic Preservation program and the Arkansas Archaeological Survey are not open to inspection and copying by any citizen of the State of Arkansas. This exception from the Arkansas Freedom of Information Act is presumably designed to bring Arkansas law into conformity with the National Historic Preservation Act of 1966 which authorizes the Secretary of Interior to "withhold from disclosure to the public information relating to the location of sites for objects listed on the National Register whenever he determines that the disclosure of specific information would create a risk of destruction or harm to such sites or objects."

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The second facet of governmental activity addressed by the Arkansas Freedom of Information Act is "public meetings", defined as "the meetings of any bureau, commission or agency of this state, or any political subdivision of the state, including municipalities and counties, board of education, and all other boards, bureaus, commissions or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds, or expending public funds." Ark. Stat. Ann. §12-2803.

The Freedom of Information Act requires all meetings of governing bodies to be public meetings. That section further requires that "executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee."

Your concern is whether the State Review Committee for Historic Preservation of the Arkansas Historic Preservation Program can go into executive session to discuss properties nominated for inclusion on the National Historic Register. These discussions would involve matters which are included within the scope of the Arkansas Historic Preservation program site files and records.

It is the opinion of this Office that the State Review Board may not go into executive session to discuss these matters. The legislature was very clear that public bodies could go into executive session only for the purpose of considering employment, appointment, promotion, demotion, and disciplining or resignation of any public officer or employee. If the legislature had intended to allow the State Review Board to discuss National Historic sites in executive sessions it would have so announced. Given the important policy considerations of the Freedom of Information Act, it is imperative that that Act be construed strictly against government bodies.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Arnold M. Jochums.

Sincerely,


STEVE CLARK
Attorney General

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