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The State of South Carolina



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September 28, 1992

The Honorable Ryan C. Shealy
Senator, District No. 24
P. O. Box 966
Lexington, South Carolina 29072

Dear Senator Shealy:

You ask for an opinion of this Office as to the difference in a public official and a state employee. The definitions of public official and state employee are many and may vary depending upon the purpose for which the terms are used. Without reference to the particular public office or position of employment and the particular legal and factual issues involved, we are unable to provide a specific answer to your question but offer general guidance.

A public officer has been defined generally as

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

As is provided in a legal treatise, the terms "office", "officer", "public office", and "public officer"

are terms of vague and variant import, the meaning of which necessarily varies with the connection in which they are used.

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63A Am.Jur.2d Public Officers and Employees § 1, p. 666; See also Op. Atty. Gen. dated June 20, 1978 ("There is no controlling definition of "employee" by state law" in the context of the Citadel's Employee Grievance Procedure); Op. Atty. Gen. dated February 6, 1981 ("The word employee has no fixed meaning which must control in every instance ... but takes color from its surroundings and frequently is carefully defined by the statute where it appears.")

The legal reference also provides that

Public office ... is in a sense an employment, and is very often referred to as such. But there is a distinction between a public office and a public employment which is not always clearly marked by judicial expression and is frequently shadowy and difficult to trace, and whether or not a particular public employee is a public officer is ultimately dependent upon the legal and factual circumstances involved.

Id., § 11, p. 675. "Although every public office may be an employment, every public employment is not an office ...". Id. Public employment may be described as "a position in the public service which lacks sufficient ... characteristics to make it an office." Id. § 12 p. 676.

Examples of the various definitions of public officer and employee may be found in our statutes. The South Carolina General Assembly has defined the term "public officer" to mean "all officers of the state that have been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law." S.C. Code Ann. § 8-1-10. For purposes of the Ethics, Government Accountability and Campaign Reform Act of 1991

"Public employee" means a person employed by the State, a county, a municipality, or a political subdivision thereof.

"Public official" means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof including candidates for office. However, "public official" does not mean a member of the judiciary except for purposes of campaign financing. A probate judge is considered a

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public official and must meet the requirements of this article.

S.C. Code Ann. § 8-13-1300 (27) and (28). For purposes of the deferred compensation program, "employees" "means any person whether appointed or elected providing services for the State or any political subdivision thereof for which compensation is paid on a regular basis." S.C. Code Ann. § 8-23-60. For purposes of the act which protects employment after reports of law violations, employee is defined as

... an employee of the following: any department of the State; any state board, commission, agency, or authority; any public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; any organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or any quasi-governmental body of the State and its political subdivisions.

S.C. Code Ann. § 8-27-10(2). Also, with regard to the offense of threatening the life of a public official or the official's family,

"Public Official" means any elected or appointed official of the United States or of this State or a county, municipality, or other political subdivision of their State.

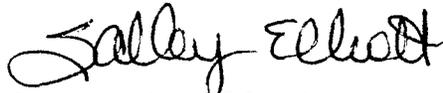
S.C. Code Ann. § 16-3-1040(a). Further, for grievance procedure, a permanent state employee is "a full or part-time employee whose permanent retention has been approved at the completion of a probationary period." S.C. Code Ann. § 8-17-30. The General Assembly also additionally defines "employee" for purposes of the South Carolina Retirement System at S.C. Code Ann. § 9-1-10.

The information and definitions provided herein are meant only to serve as examples. Obviously the distinction between a public official and state employee is dependent upon the specific "office" and "employment" involved in a particular circumstance. The terms "public official" and "state employee" which you have in mind may not fall within any definition or consideration discussed herein. Nevertheless, I hope I have provided general information for your

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purposes. I have also enclosed several prior opinions which may be relevant.

Sincerely,

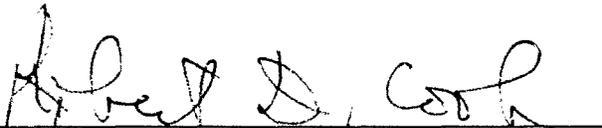


Salley W. Elliott
Assistant Attorney General

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Enclosures: Op. Atty. Gen., June 20, 1978
Op. Atty. Gen., March 23, 1981
Op. Atty. Gen., February 6, 1981
Op. Atty. Gen., November 5, 1975
Op. Atty. Gen., April 6, 1979
Op. Atty. Gen., January 3, 1979
Op. Atty. Gen., August 8, 1978
Op. Atty. Gen., March 13, 1968
Op. Atty. Gen., April 27, 1971

REVIEWED AND APPROVED BY:



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