

1984 WL 249950 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 1, 1984

\*1 The Honorable Harry W. Davis, Jr.  
Commissioner  
Department of Youth Services  
Post Office Box 7367  
Columbia, South Carolina 29202

Dear Harry:

I recently wrote you concerning the proviso in the Department of Education's section of the Appropriations Act which provides for personnel at the Department of Youth Services (DYS) and the Department of Corrections receiving a percentage increase in their 'annual salary' equal to the percentage allocated to other instructional personnel. Ops. Atty. Gen. (July 23, 1984). In a meeting concerning this opinion on July 23, 1984, additional questions were raised by those present.

The first question is whether the 'annual salary' to which the proviso refers means the total salary paid to personnel regardless of funding source. The July 23rd opinion of this Office stated that the term 'annual salary' refers to the salary paid in a twelve (12) month year. This term is not qualified as to funding source such as Education Finance Act Funding for the State minimum teacher salary schedule. Therefore, to give full effect to its ordinary meaning, this term should be interpreted to mean the total salary paid to a DYS employee in a twelve (12) month year regardless of the funding source. See, Sutherland Statutory Construction, Vol. 2A, § 46-01 (4th Ed.). The other provisos in the Department of Education's section of the Appropriations Act which provide for Education Finance Act funding for DYS and DYS's compliance with that Act's minimum salary schedule do not appear to qualify the term 'annual salary' for purposes of applying the percentage increase in salary.

I was also asked whether covered personnel would be owed salary increases from the effective date of the proviso in question or whether they need be paid these increases only as of when the necessary administrative arrangements are made for payment. Nothing in this proviso indicates that the salary increases are to be delayed for those purposes. If implementation of the salary increase is delayed, personnel must be reimbursed for previously earned but unpaid increases in salary. I suggest that your staff members consult with the Department of Education and the Comptroller General's Office as to the best means of handling this reimbursement.

In conclusion, under the proviso in question, 'annual salary' appears to mean the total salary paid to a DYS employee during a twelve (12) month year regardless of its funding source. The percentage increase in this salary required by the proviso in question would be owed to the employee as of the effective date of this provision in the Appropriations Act. If implementation of this provision is not possible until some future date, employees who have earned these increases must be reimbursed for them. Cf. Ops. Atty. Gen. (July 25, 1984).

Mr. Lane Coleman, Superintendent of the Palmetto Unified School District of the Department of Corrections was also present at the meeting to which I referred above. He is interested in these same issues. The same conclusions stated in this letter and that to you of July 23rd should apply to his District's teachers also. See, Section 24-25-10, et seq. of the Code of Laws of South Carolina (1976), as amended.

\*2 If I may be of further assistance, please let me know.  
Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

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