

1981 WL 158136 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 6, 1981

*1 The Honorable Betty B. Greer

Judge of Probate

Union County

Post Office Box 447

Union, South Carolina 29379

Dear Judge Greer:

You have asked the opinion of this office as to whether various individuals are 'state employees' within the context of the State Appropriations Act for judicial commitments. § 4 of Act 517 of 1980 Acts and Joint Resolutions. You specifically refer to the language in the Act which states that 'no money appropriated pursuant to Item VI, Judicial Commitment, shall be used to compensate any state employees appointed by the court as examiners, guardians ad litem, court reporters, or attorneys.' § 4 of Act 517.

The word employee has no fixed meaning which must control in every instance, and it is not a word of art, but takes color from its surroundings and frequently is carefully defined by the statute where it appears. 30 C.J.S. 'Employee' at 672. There appears to be no controlling definition of 'state employee' within the Act itself. However, the South Carolina Budget and Control Board has adopted as definition of state employee, 'any person in the employ of an agency who is paid a salary or wage.' South Carolina Personnel Rule Manual at 0:02.

The applicable sections of the Appropriations Act make no distinction between full-time or part-time employees. Thus, a physician who receives a straight salary with payroll deductions from the State Agency of Vocational Rehabilitation would be a 'state employee' for purposes of the ban on compensation in judicial commitment proceedings outlined in the Appropriations Act, whether he is employed full or part-time. However, a physician who is retained pursuant to a personal services contract with casual or occasional work and who does not receive straight salary, would not be considered a state employee for the purposes of judicial commitment.

An attorney who is a Trustee of the University of South Carolina and paid on a per diem basis, an assistant solicitor paid by the county, and a public defender paid by the county appear not to fit the definition outlined by the State Personnel Rules, and, thus, would not be considered state employees in the context of the Appropriations Act.

If I can be of further assistance to you, please let me know.

Very truly yours,

Edwin E. Evans

Assistant Attorney General

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