



ALAN WILSON
ATTORNEY GENERAL

June 17, 2015

The Honorable Ralph King Anderson, III
State of South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, South Carolina 29201-3755

Dear Judge Anderson:

We are in receipt of your opinion request concerning whether administrative law judges “are exempt from accruing annual leave.” In your letter you note the following:

Administrative law judges are elected in the same manner and must meet the same qualifications as judges of the unified judiciary who are “permanent full-time state employees.” Our court has always treated our judges as elected officials who are exempt from accruing annual leave. Accordingly, our judges have never kept annual leave records showing the accrual of annual leave and deductions from annual leave for absences, have not been required to request annual leave in order to be absent from the office, and have never been granted annual leave for such absences.

In light of this you ask: (1) if “judges of our court [are] entitled to accrue annual and sick leave pursuant to S.C. Code Ann. § 8-11-610?;” (2) whether “administrative law judges [are] required to keep annual leave and sick leave records?;” and (3) if “an administrative law judge [is] entitled to receive an annual leave payout under S.C. Code Ann. § 8-11-620” upon “separation from State service?” Our responses follow.

Law/Analysis

Each of your questions hinge upon whether administrative law judges “accrue annual and sick leave pursuant to S.C. Code Ann. § 8-11-610[.]” Based on our prior opinions we believe they do not¹ and, as a result, it follows that administrative law judges are not required to keep annual leave or sick leave records, nor are they entitled to an annual leave payout under Section 8-11-620 of the Code.²

¹ Section 8-11-610 of the South Carolina Code explains “[a]ny permanent full-time state employee is entitled to annual leave with pay” and provides a formula for calculating annual leave. S.C. Code Ann. § 8-11-610 (1986).

² Section 8-11-620 of the Code states, in relevant part: “Upon termination from state employment, an employee may take both annual leave and a lump-sum payment for unused leave, but this combination may not exceed forty-five days in a calendar year except as provided in Section 8-11-610.” S.C. Code Ann. § 8-11-620(A)(1) (1986).

In a prior opinion of this Office we explained individuals who are elected on a statewide basis are public officials rather than state employees and are therefore not subject to the sick leave statute. Op. S.C. Att’y Gen., 1976 WL 23092 (October 5, 1976). The rationale supporting this conclusion was that “the Constitution of this State provides for the sole method of removal of such officers, that being by way of impeachment in accordance with the provisions of Article XV of the Constitution.” Op. S.C. Att’y Gen., 1976 WL 23092 (October 5, 1976). Subsequently, in 1978, we addressed the slightly broader question of whether a judge who is elected on a statewide basis is “subject to the sick *and* annual leave statutes which apply to state employees?” Op. S.C. Att’y Gen., 1978 WL 35144 (October 2, 1978) (emphasis added). There, we concluded that since a judge is a public officer and not an employee, “a Family Court judge . . . is not included under the sick and annual leave statutes.” Op. S.C. Att’y Gen., 1978 WL 35144 (October 2, 1978); see also, Op. S.C. Att’y Gen., 1980 WL 120966 (November 14, 1980) (concluding a family court judge is a public officer rather than a state employee and as a result, “justices and judges have no obligation . . . from either the Annual Leave Act or the Sick Leave Act to keep annual leave and sick leave records . . .”). This was reaffirmed in a 1987 opinion where we stated, “this Office has concluded on several occasions that elected officials [are] not entitled to annual or sick leave.” Op. S.C. Att’y Gen., 1987 WL 245436 (March 31, 1987). Thus, the general rule is that since elected officials, including judges, are public officers rather than state employees, neither the sick leave nor annual leave statutes apply to such individuals.³

Here, applying our prior opinions on this question to the position of administrative law judge we conclude that because administrative law judges are, like other judges, elected officials who are officers rather than employees, they do not accrue annual leave or sick leave. Indeed, our prior opinions have acknowledged administrative law judges are public officers. Op. S.C. Att’y Gen., 2000 WL 1205955 (August 3, 2000); Op. S.C. Att’y Gen., 1984 WL 159932 (October 29, 1984). In fact, administrative law judges are elected the same way as members of the family court, circuit court, court of appeals and Supreme Court in that they are elected by the General Assembly following nomination by the Judicial Merit Selection Commission. See S.C. Code Ann. § 2-19-80(A) (2005) (“The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge division.”); S.C. Code Ann. § 1-23-510(A) (2005) (“The judges of the [Administrative Law] division must be elected by the General Assembly in join session . . .”). Moreover, other provisions of South Carolina law also suggest administrative law judges are public officials and are therefore not entitled to annual

³ Notably, this rule has even been extended to apply to circuit public defenders who, unlike judges, are not elected, but are merely nominated by the Circuit Public Defender Selection Committee pursuant to Section 17-3-510(B) of the Code. Op. S.C. Att’y Gen., 2011 WL 6959372 (December 22, 2011). There, we acknowledged that despite the fact circuit public defenders are, for certain purposes deemed full-time state employees, because they were entitled to the same benefits and compensation as circuit solicitors, the sick and annual leave statutes were inapplicable. Op. S.C. Att’y Gen., 2011 WL 6959372 (December 22, 2011).

leave or sick leave. For example, administrative law judges, like members of the unified judiciary system, are still subject to the Code of Judicial Conduct. See S.C. Code Ann. § 1-23-560 (2005) (“Administrative law judges are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules); Rule 502(r), SCACR, Jud. Discp. Enf., R. 2 (defining judge to include “judges of the Administrative Law Court.”). Furthermore, they are included within the same retirement system as judges and solicitors, both of which are clearly public officials. See S.C. Code Ann. § 9-8-40(1) (2014 Supp.) (“All administrative law judges on July 1, 2014 who have not retired may elect to become a member of the [Retirement System for Judges and Solicitors].”). As a result, we believe, in keeping with our prior opinions, that administrative law judges, like other judges, are public officials and are therefore not entitled to either annual leave or sick leave. Accordingly, it follows that since administrative law judges do not accrue either annual or sick leave, they cannot be required to track such leave, nor can they receive payment for it under Section 8-11-620.

Conclusion

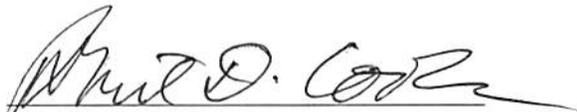
In conclusion, it is the opinion of this Office that administrative law judges, like other judges, are public officials and therefore do not accrue either annual or sick leave. As a result, it follows that administrative law judges have no reason to track either annual or sick leave, nor can they receive payment for unused annual leave under Section 8-11-620 of the Code.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General