

1982 WL 189314 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1982

*1 Dr. Jack S. Mullins
Director
State Personnel Division
Post Office Box 12547
Columbia, SC 29202

Dear Dr. Mullins:

You have recently inquired of this office concerning whether employees of the Education Division of the Department of Youth Services are subject to the provisions of the State Employee Grievance Procedure Act (Section 8-17-10 et seq., Code of Laws of South Carolina, 1976, as amended). The answer to this question is affirmative.

The Grievance Act extends to all permanent state employees except those specifically exempted from coverage in Section 8-17-50, Code of Laws of South Carolina, 1976.^{a1} Employees of the Education Division of the Department of Youth Services are not among the employees exempted from the Grievance Act's coverage. However, Act No. 124 of 1981, codified as [Sections 20-7-3100 et seq., Code of Laws of South Carolina, 1976 \(Cum. Supp. 1981\)](#), which combined the Department of Youth Services and the Department of Juvenile Placement and Aftercare under the administration of the Board of Youth Services; provides, in pertinent part:

§ 2. * * *

The Board [of Youth Services] shall operate as a Board of Trustees for schools under its jurisdiction for all administrative purposes, including the receipt and expenditure of funds appropriated or granted to the schools for any purpose. The Commissioner with the advice and consent of the Board shall employ a full-time superintendent of schools for the special school district. The superintendent shall hold a valid superintendent's certificate from the Department of Education and shall serve as the head of the Education Division.

In lieu of classification by the Division of State Personnel, the employment status of the superintendent of schools for the Department and all instructional personnel operating under the Education Division of the Department shall be governed by the laws of the State regarding employment of instructional personnel and regulations of the Department of Education. [[Section 20-7-3240, Code of Laws of South Carolina, 1976 \(Cum. Supp. 1981\)](#) (emphasis added)]

The question for resolution is whether the emphasized language from [Section 20-7-3240](#) has the effect of amending the Grievance Act sub silentio by adding the superintendent of schools and instructional personnel operating under the Education Division of DYS to the list of exemptees set forth in Section 8-17-50. It is the opinion of this Office, although the opinion is not entirely free from doubt, that the employees of DYS referred to in Section 2 are not exempted from the Grievance Act.

One Supreme Court has consistently held that repeals by implication are disfavored. In the interest of Shaw, 274 S.C. 534, 539, 265 S.E.2d 522 (1980); City of Spartanburg v. Blalock, 223 S.C. 252, 262-3, 75 S.E.2d 361 (1953). The same rule is applicable

to amendments by implication: they are disfavored. 1A Sutherland's Statutory Construction § 22.13 (4th ed. 1973); 82 C.J.S. Statutes § 252 at 419-420 (1953). Thus, repeal or amendment of an earlier act by a later act by implication will be found only if the two acts are incapable of reasonably being reconciled, for if the two acts can be reasonably construed so that both can be given full effect, they will be so construed. City of Spartanburg v. Blalock, *supra*, 223 S.C. 262-3.

*2 [Section 20-7-3240](#) and the Grievance Act are, in our opinion, subject to reasonable reconciliation. Both acts can be given full effect if [Section 20-7-3240](#) is construed simply to 'declassify' the superintendent of schools and instructional personnel within the Education Division of DYS and to make them subject to the same laws and regulations that govern the eligibility for, and relative standing upon, employment of public school superintendents and school teachers generally. *See, e.g.*, Department of Education Regulations 43-60—43-66 (relating to certification requirements of teachers and superintendents); [Section 59-25-20, Code of Laws of South Carolina](#), 1976 (public school teachers cannot be employed unless they hold valid certificate). This construction of [Section 20-7-3240](#) is supported by the canon of statutory construction *noscitur a sociis*, which provides that the meaning, of particular terms in a statute may be ascertained by reference to words associated with them in the statute. As one authority has noted, 'It is a familiar policy in the construction of the terms of a statute to take into consideration the meaning naturally attaching to them from the context, and to adopt the sense of the words which best harmonizes with the context.' 73 Am. Jur. 2d Statutes § 213 (1974). To interpret the term 'employment status' to mean only eligibility for, and relative standing upon, employment is in our opinion, to adopt the meaning of these words which best harmonizes with the context in which the words appear.

In conclusion, the final paragraph of [Section 20-7-3240, Code of Laws of South Carolina, 1976 \(Cum. Supp. 1981\)](#), does not, in this office's opinion, exempt the superintendent of schools and instructional personnel operating under the Education Division of DYS from the State Employee Grievance Procedure Act. Therefore, these employees are subject to the Grievance Act.

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

[a1](#) The exemptions are set forth in Section 7 of the new Grievance Act (H. 2626).
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