

1982 WL 189118 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1982

*1 William S. Hall, M.D.
State Commissioner
Department of Mental Health
2414 Bull Street
Columbia, South Carolina 29201

Dear Dr. Hall:

This is in response to your letter of September 24, 1982, addressed to the Attorney General. You have asked the opinion of this office concerning (1) whether the State Employee Grievance Procedure Act of 1982 (Act No. 402 of 1982) applies to the Director of a Community Mental Health Center and (2) whether, as a corollary of its right to employ him or her, a Community Mental Health Board has the authority to terminate at will the employment of the Director of a Community Mental Health Center. In this office's opinion, the answer to the first query, is "no" and the answer to the second query is a qualified "yes".

I.

The State Employee Grievance Procedure Act of 1982 (hereafter "the Grievance Act") applies only to state employees. Under this Act, permanent state employees are afforded the right to grieve certain adverse personnel actions pursuant to an agency grievance plan and to appeal to the State Employee Grievance Committee any grievance (as defined in the Act) that they are unable to resolve internally (i.e., within the employing agency). Section 7 of the Grievance Act, however, specifically exempts certain state employees from its coverage.

Those exempted include "[a]ny chief administrative officer who has the authority and responsibility for any agency within state government including the divisions of the Budget and Control Board." Section 2(1) of the Grievance Act defines "agency" as follows:

"Agency" means any department, institution, board, commission, council, division, bureau, center, school, hospital or other facility that is a governmental unit of the State of South Carolina. Public schools, special purpose districts, and other units of local government are excluded from this definition. (emphasis added)

In [Brown, et al. v. Martin, et al.](#), 203 S.C. 84, 88, 26 S.E.2d 317 (1943), our Supreme Court recognized the power of the General Assembly "to prescribe legal definitions of its own language" and held that "such definitions are generally binding upon the Courts, and should prevail." Similarly, in [Fruehauf Trailer Co. v. S.C. Electric & Gas Co.](#), 223 S.C. 320, 325, 75 S.E.2d 688 (1953), the Court commented:

The lawmaking body's construction of its own language by means of definitions of the terms employed should be followed in the interpretation of the act or section to which it relates and is intended to apply.

Adherence to the rule that the General Assembly's definitions of words used in an act are controlling compels the conclusion that the Director of a Community Mental Health Center is not covered by the Grievance Act. The Director is plainly the chief administrative officer of a "... center ... that is a governmental unit of the State of South Carolina." See Letter Opinion dated 1/28/80 from Deputy Attorney General Raymond G. Halford to State Auditor, at p. 2 (Community Mental Health Centers are "quasi-state agencies" and their employees are considered state employees); 1965 Ops.Atty.Gen. 197 (employees of Centers are under control of S.C. Mental Health Commission and are covered by State Fund Sections of Workmen's Compensation

Law).¹ Consequently, the Director is the chief administrative officer of an “agency” within state government and is, therefore, exempted from the Act's coverage by virtue of Section 7, paragraph 8 thereof.

II.

*2 The answer to your question concerning the power of a Community Mental Health Center Board to terminate the Director of a Community Mental Health Center is not entirely free from doubt. The general rule is that “[i]n the absence of constitutional or statutory provisions for term or tenure in state employment, state employees are regarded as holding their positions at the pleasure of the appointing authority.” 81A C.J.S. States, § 92 at 484 (1977). Cf. [State ex rel. Thompson v. Seigler](#), 230 S.C. 115, 123, 94 S.E.2d 231 (1956), wherein our Supreme Court quoted approvingly the following passage from 16A C.J.S. Constitutional Law, § 600, p. 705:

It is generally held that while public officers and civil service employees have rights which will be protected against infringement, those rights are not vested property rights protected by the state and federal constitutional provisions against the taking of property without due process of law; and the rule supported by the great weight of authority is that public office and government employ, and the emoluments thereof, are not property within the sense of the constitutional guarantees of due process of law.

Thus, unless state law—defined to include agency regulations—confers on the Director of a Community Mental Health Center an enforceable expectation of continued employment, i.e., a property interest in his job protected by the Fourteenth Amendment to the U.S. Constitution, he may be dismissed at the will of the Board without any cause and without any right to a pre-termination hearing before the Board. See [Board of Regents v. Roth](#), 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); [Bishop v. Wood](#), 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976); [Ogilbee v. Western District Guidance Center, Inc.](#), 658 F.2d 257 (4th Cir.1981). Of course, no employee—even an at will employee—may be discharged because of an illegal or unconstitutional reason.

See, e.g., [Perry v. Sindermann](#), 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); [Elrod v. Burns](#), 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); [Edwards v. School Board of the City of Norton](#), 658 F.2d 951 (4th Cir.1981).

The law in this state is that where one is employed for an indefinite term, either party (i.e., employer or employee) may terminate the employment relationship at will. See [Johnson v. American Railway Express](#), 163 S.C. 191, 198, 161 S.E. 473 (1931); [Shealy v. Fowler](#), 182 S.C. 81, 86-87, 188 S.E. 499 (1936); [Parker v. Southeastern Haulers, Inc.](#), 210 S.C. 18, 30, 415 S.E.2d 387 (1947); [Orsini v. Trojan Steel Corp.](#), 219 S.C. 272, 276, 64 S.E.2d 878 (1951). Therefore, assuming that the Director was employed for an indefinite term and assuming further that the Board and/or Department of Mental Health have not, by rule or regulation (e.g., an employee handbook; see [Bane v. City of Columbia](#), 480 F.Supp. 34, (D.S.C.1979)) or by express agreement guaranteed the Director continued employment for a specific term, under state law, he has no contractual right to continued employment.

*3 Furthermore, I have been unable to find any state statute or regulation of the State Personnel Division which would confer on the Director of a Community Mental Health Center the right to continue in that position in the absence of “cause” justifying his dismissal. Employment by the state does not automatically confer tenure or job security. [Nantz v. Employment Security Commission](#), 290 N.C. 473, 226 S.E.2d 340 (1976). Assuming arguendo that the Director is a “permanent employee” within the meaning of the State Personnel Division's rules and regulations, such designation is insufficient in and of itself to vest the Director with any property interest (i.e., expectation of continued employment in his position absent cause for dismissal) in his job. See [Bishop v. Wood](#), supra; [Bane v. City of Columbia](#), supra. Moreover, although Section 7.09 D.2. of the State Personnel Manual (“An agency head may dismiss any employee for just cause.”) might afford the Director protection against arbitrary, summary removal by the Commissioner of Mental Health, but cf. § 44-9-40, [Code of Laws of South Carolina](#), 1976, this provision apparently would afford the Director no protection against summary dismissal by the Board of the Community Mental Health Center for any reason. See [Bane v. City of Columbia](#), supra (City of Columbia employee handbook providing that employee could be dismissed by department head for cause did not alter city manager's right to dismiss at will; where employees dismissed by city manager, not department head, “cause” not a prerequisite to dismissal)²

Therefore, unless your agency regulations or regulations adopted by the Board of the Community Mental Health Center—including any applicable employee handbook or like publication—provide employees with an enforceable expectation of continued employment absent cause for dismissal, the Director may be dismissed by the Board at its pleasure. If regulations governing Center employees afford more protection to the Director—either in terms of protection from summary dismissal or in terms of procedural prerequisites to dismissal—the regulations must be scrupulously followed. [Vitarelli v. Seaton](#), 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959); [Prince v. Bridges](#), 537 F.2d 1269 (4th Cir.1976).

III.

In conclusion, it is the opinion of this office that the State Employee Grievance Act of 1982 does not apply to the Director of a Community Mental Health Center and, with the qualifications hereinabove noted, that the Board of Directors of a Community Mental Health Center may, as an incident of its power to employ personnel under [§ 44-15-70\(2\), Code of Laws of South Carolina](#), 1976, dismiss the Director of the Center at will for any reason except an unconstitutional or illegal reason.

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

- 1 Copies of the cited opinions are attached.
- 2 Bane was cited with approval by the Fourth Circuit Court of Appeals in [Bunting v. City of Columbia](#), 639 F.2d 1090, 1094 (1981).
1982 WL 189118 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.