

1977 WL 37156 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 6, 1977

***1 RE: Margaret Herlocker**

Timothy G. Quinn, Esquire
Office of the President
Legal Affairs and Legislation
University of South Carolina
Columbia, S. C. 29208

Dear Tim:

You have requested an opinion from this office concerning whether an employee resigning from a State agency is entitled to collect a lump sum payment for unused leave even though this individual is later employed by another State agency. In this case, the employee worked for the S.C. Department of Health and Environmental Control (DHEC) from February 6, 1976, until June 9, 1977. The information which was submitted also indicates that this employee was employed for the first summer session at the University of South Carolina (USC) for the period commencing June 3, 1977, until July 8, 1977. On June 21, 1977, the University offered this employee an appointment as a teaching associate at USC for 1977-78 effective August 16, 1977. On July 26, 1977, DHEC, by memorandum, notified USC that it was DHEC's 'understanding that this employee is transferring to your agency and request the transfer of all accumulated leave.'

Under the Code of Laws of South Carolina, 1976, Title XIII, Chapter 11, Article 7, entitled 'Annual Leave for State Employees', is S.C. Code Ann. § 8-11-620 (1976) which states in part:

Upon termination from State employment, an employee may take . . . a lump sum payment for unused leave . . .

Under this same Article is S.C. Code Ann. § 8-11-640 (1976) which contains the declaration:

In the event an employee transfers from one State agency to another his annual leave balance shall also be transferred.

In accordance with these provisions, and pursuant to the authorities stated in S.C. Code Ann. § 8-11-680 (1976) the State Budget and Control Board, through the Personnel Division has promulgated annual leave guidelines (revised July, 1974). Section 1-10 of these guidelines states:

Upon transfer of an employee without break-in-service from one State agency to another, all accumulated, unused annual leave up to a maximum of forty-five (45) days shall be transferred with the employee from the losing agency to the gaining agency.

Because of the overlap between the time this particular employee was employed by USC for its summer session and the time of effective resignation from DHEC, there does not appear to be a 'break-in-service' as that term is defined in § 1-9 of the Annual Leave Guidelines, supra and thus a 'transfer' occurred. (We offer no opinion as to whether this overlap of time in employment with USC and DHEC constituted 'dual employment' within the meaning of the Dual Employment Policies and Procedures promulgated by the State Budget and Control Board through its Personnel Division [effective January 1, 1977]).

However, despite the fact that a 'transfer' of annual leave appears in order, S.C. Code Ann. § 8-11-680 (1976) in this case specifically precludes any transfer of annual leave. This Section states in part:

*2 [This] Article, however, shall not apply to teaching personnel and officials of academic rank at State-supported institutions of higher learning. (emphasis added)

Therefore none of the provision of Article 7, including those which set forth the provisions by which annual leave shall be computed; the amount of leave and lump sum payment permitted upon termination of employment; and credit for prior State service or transfer from one State agency to another, are applicable when the State employee in question is a part of the teaching personnel and officials of academic rank at USC or other State-supported institutions of higher learning. In the case of these employees, no transfer of the annual leave balance can be made by the losing agency to the gaining agency because there exists no authorization for such transfer. Therefore, DHEC, solely for the purposes of accounting for annual leave, should treat this employee as though the employee were terminating from State employment, and provide a lump sum payment for unused leave. Any other interpretation would appear to be inconsistent with the terms of the law relating to annual leave for State employees. Please note that pursuant to such an interpretation, that all sick leave credits for any such employees resigning from a State agency in order to obtain employment in a teaching capacity at USC would be forfeited under the Sick Leave Guidelines promulgated by the Budget and Control Board through its Personnel Division in accordance with § 1-12(4).

I apologize for the extreme delay in responding to your request. If I can provide any further information, I will try to do so more expeditiously.

With kind regards, I remain
Very truly yours,

Nathan Kaminski, Jr.
Assistant Attorney General

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