

1979 WL 43158 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1979

**\*1 RE: Recordings of Grievance Hearings**

Jack S. Mullins, Ph.D.  
Director  
State Budget and Control Board  
Personnel Division  
1205 Pendleton Street  
Post Box 12547  
Columbia, South Carolina 29211

Dear Dr. Mullins:

You have recently asked this Office for its opinion concerning the right of a grievant to tape record his intra-agency grievance hearings as well as his hearing before the State Employee Grievance Committee.

It is the opinion of this Office that a grievant has no right to record any of his grievance hearings. Pursuant to the Freedom of Information Act, § 30-4-70(a)(1), 1976 Code of Laws of South Carolina, and the State Committee's Rules, R 59-12 of the Code, grievance hearings are held in executive session and a grievant has no right to a public hearing.

With regard to the policy making authority of the State Committee, the State Employee Grievance Act, § 8-17-30 of the Code provides:

The presiding officer will have control of the proceedings and will take whatever action is necessary to insure an equitable, orderly and expeditious hearing. Parties will abide by the presiding officer's decisions . . .

The committee shall have the authority . . . to make such rules and regulations as may be necessary to carry out the provision of this article; and to secure the services of a recording secretary at its discretion.

It has been a long-standing policy of the State Committee not to allow either party to record grievance hearings. Pursuant to the quoted statute the State Committee has promulgated R 59-14<sup>aa</sup> of the Code which requires all proceedings to be recorded. And according to the Administrative Procedures Act, § 1-23-320(h), 1976 Code of Laws of South Carolina, as amended, 'Oral proceedings or any part thereof shall be transcribed on request of any party.'

While my research was unable to uncover any cases concerning the right of a party to tape hearings, I have uncovered cases concerning an analogous situation, i.e., the right to have a stenographer present during a non-public hearing. In Torras v. Stradley, 103 F.Supp. 737, 740 (N.D.Ga. 1952) the plaintiff wanted her stenographer to accompany her when she testified at a non-public investigative hearing. The court relied upon the federal Administrative Procedure Act to deny the plaintiff's request. The court reasoned:

It seems obvious, by inference, that the Congress, in passing the Administrative Procedure Act, did not intend that a witness testifying in a non-public investigative proceeding should have a right to the presence of a personal stenographer. The provision of 5 U.S.C.A. § 1005(b),<sup>aa</sup> that a witness should have a right, under certain circumstances and conditions, to a copy of the transcript of his testimony refers to 'the official transcript'. If a witness had a right to have his own stenographer present, he could arrange to have his own transcript prepared, and there would be no need for a statute to

aid him in obtaining a copy of the transcript from the agency. A witness summoned to testify in such an investigation has no right to control the manner of conducting the investigation or its secrecy by insisting upon having his own stenographer present to report the interview. The mere convenience of the witness will not support such a demand as against the Treasury Department policy and practice; nor may the witness raise any inference of unfairness as a basis for such a demand. There is a presumption in favor of regularity of official actions. (Emphasis added).

\*2 Another federal district court subsequently relied on this case to deny a party the right to have a stenographer present during a non-public hearing. See, In re Neil, 209 F.Supp. 76 (S.D.W.Va. 1962).

Since the State Committee records all hearings and a party may request a transcript of the hearing from the Committee, it is not unreasonable or inequitable for the presiding officer to deny parties permission to record hearings personally. The presiding officer could reasonably decide that a party's changing tapes and monitoring the recorder would inhibit an orderly, expeditious hearing. With regard to intra-agency step proceedings, the Freedom of Information Act, § 30-4-70(a) (1) of the Code, allows discussions of employment matters to be held in a meeting closed to the public and a person conducting such a meeting might chose not to allow a verbatim record of the non-adversary hearing to be kept.

Sincerely,

Barbara J. Hamilton  
State Attorney

Footnotes

- a R 59-14 of the Code provides:  
All proceedings before the committee shall be recorded. The tape shall be preserved as a permanent record of the committee.  
The tapes will not be fully transcribed unless the Chairman or committee members, agrees to such transcription.
- aa 5 U.S.C. § 1005(b) has been repealed. See 5 U.S.C. § 555(c).

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