

1978 S.C. Op. Atty. Gen. 106 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-75, 1978 WL 22556

Office of the Attorney General

State of South Carolina

Opinion No. 78-75

April 25, 1978

*1 The State Employee Grievance Committee may hear a question of disputed issue of fact as to whether the policy of the Budget and Control Board has been followed; however, if no disputed factual issue exists between the employees and the employer agency as to the application of the policy, it appears that the matter could be submitted directly to the Budget and Control Board for clarification or interpretation.

Dr. Jack S. Mullins
Director
Personnel Division
Budget & Control Board
1205 Pendleton Street
Columbia, S.C. 29201

Dear Dr. Mullins:

You have asked this Office to render an opinion as to whether the State Employee Grievance Committee, pursuant to the State Employee Grievance Procedure Act, has jurisdiction to consider grievance appeals from approximately 80 teachers employed at the S.C. School for the Deaf & Blind. You enclosed with your request for an opinion a copy of one of the grievance application forms together with an attached grievance statement, which I understand to be similar in all of the grievances involved in this particular matter.

The authority to determine jurisdiction in this matter is set forth in S.C. Code Ann. § 8-17-40 (1976), as amended:

The State Personnel Director shall assemble all records, reports and documentation of the earlier hearings on the grievance and review the case to as certain there has been full compliance with the established grievance policies, procedures and regulations within the agency or department involved and determine whether the action is grievable to the State Committee.

The rules and regulations of the State Employee Grievance Committee, S.C. Code Ann. § R-59-5 (1976), as amended, state:

Upon receipt of appeals of questionable jurisdiction, the State Personnel Director shall immediately request an opinion from the Attorney General.

The grievance application form in question states that the employee is grieving the loss of certain 'enumerated rights and benefits'. It is stated that the 'rights and benefits' in question include incentive pay for specialized training, certain types of leave benefits with pay, certain accommodations for working hours on special occasions, and certain accommodations on work days where there are hazardous weather conditions. The grievance application form alleges:

The appeal of the deprivation of the above stated rights is premised upon the advice of legal counsel that the summary loss of same, without due process of law, is violative of the Fourteenth Amendment of the United States Constitution; [Article I, Section 3, of the South Carolina Constitution](#); and of state and federal case law. Moreover, the administration's action is patently contrary to the Budget

& Control Board's decision that the personnel of the [South Carolina School for the Deaf & Blind] not be classified as state employees (for purposes of determining leave, salary and other terms of employment) until appropriate legislation is enacted by the General Assembly.

*2 The application form contains the allegations that these benefits were 'vested' expressly or by implication under the employment contract with the South Carolina School for the Deaf & Blind, and that the loss of these rights and benefits constitute a breach of contract 'entitling the employee to specific performance and/or damages'.

Reviewing all of the materials submitted to your Office on this matter, it appears that all of these grievances arise out of the Budget & Control Board's application to the employees of the South Carolina School for the Deaf & Blind of uniform policies and procedures for the regulation of compensation, for the regulation of leave with or without pay, hours of work, fringe benefits, and other conditions of employment, pursuant to the authority of [S. C. Code Ann. § 8-11-230 \(1976\)](#), as amended. It also appears from the records compiled by your Office that the contracts of employment with the teachers of the School for the Deaf & Blind are for a period of one year, and are renewed annually.

Initially, it must be noted that the School for the Deaf & Blind is an agency of the State created pursuant of [S.C. Code Ann. § 59-47-10 \(1976\)](#) as amended. The employees of this agency are State employees, subject to all of the provisions of law enacted by the General Assembly for personnel administration for employees of State government, except where specifically exempted by the General Assembly. There appears to be no provisions for exclusion of the employees of the S. C. School for the Deaf & Blind from the applicability of the general laws relating to personnel administration ([S.C. Code Ann. §§ 8-11-210, et seq.](#)), relating to annual leave for State employees ([S. C. Code Ann. §§ 8-11-610, et seq.](#)), and relating to office hours ([S. C. Code Ann. § 8-11-10](#)). Therefore, these laws are applicable to the employees of the School for the Deaf & Blind under the general rules, regulations, and policies as promulgated by the Budget & Control Board pursuant to its statutory authority.

As a general matter of law, property interests are not created by the United States Constitution. (This principle applies to [Article I, Section 22 of the South Carolina Constitution](#).) Rather, property interest are created, and their dimensions are defined, from such independent sources as [State law. Board of Regents v. Roth, 408 U.S. 564, 577 \(1972\)](#). As noted by the United States Supreme Court in [Bishop v. Wood, 462 U.S. 341, 344 \(1976\)](#):

A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to State law. (Emphasis added)

Although there is little case law on point, it has been said that 'a public employee does not have a property interest in the continuance of any specific rate or method of compensation'. [Chicago Patrolmen's Association v. City of Chicago, 56 Ill. 2d 503, 309 N.E. 2d 3, 6, cert. denied, 419 U.S. 839 \(1974\)](#). While not specifically on point, the South Carolina Supreme Court has stated:

*3 Public officers have no contract or property rights in their offices, and subject to special Constitutional restrictions (not here present), the General Assembly has complete control of them. [O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 \(1945\)](#); cf. [McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638 \(1971\)](#); [Craig v. Pickens County, 189 S.C. 164, 200 S.E.2d 825 \(1939\)](#).

The State Grievance Procedure, [S.C. Code Ann. § 8-17-20 \(1976\)](#), as amended, states in part:

Compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it applies to alleged inequities within a particular agency or department.

It is the opinion of this Office that this language does not create a property interest for a given class of employees in the continuance by an agency of any specific rate or method of compensation, such as incentive pay schemes here involved. In this sense, State employees have no constitutionally guaranteed procedural rights which must be honored when there is effected a uniform reduction in salary or change in method of compensation by the General Assembly or by an agency acting pursuant to law. A grievance under the law is maintainable only if it is claimed that salary levels between given employees within a specific agency are in fact inequitable. The allegations contained in these grievance applications concerning across-the-board reductions in salary levels or methods of compensation do not state facts sufficient to constitute a grievable matter under § 8-17-20, supra.

The same observations are true with regard to annual leave or vacation time with pay, since this is universally recognized as a method of compensation.

Compensation includes not only an employee's regular wages, but also vacation and holiday pay, overtime wages, living allowances, commissions, and bonds.

1 CCH Employment Practices Guide ¶512 (1976).

Also see 15A Am.Jur.2d Civil Service, § 50 (1976). Just as in the case where changes in compensation are made, if an agency must make across-the-board modifications in its paid leave policies in order to bring its practices in line with State law (such as is alleged in this instance), the matter is not grievable under the State Grievance Procedure Act. The same principle would apply in the case of uniform changes in the working hours afforded the employees of a given agency, where the changes are made by the agency in order to comply with State law and the rules and regulations of the State Personnel Division.

The fact that there was a written contract of employment existing between the State employee and the State agency is of no significance in this case. First, the method and rate of compensation for public employment is not a matter for private contract, unless this is specifically provided for by law.

[A]n agreement by a public official by which he agrees to perform his official duties for a different compensation from that fixed by law . . . is against public policy and void; and the same is true of a promise to give a public officer more than the legal salary or fees.

*4 17 C.J.S. Contracts, § 220 (1963).

Secondly, each new contract negotiated annually would be a contract of employment complete in itself and would supersede and discharge rights and obligations incurred under any prior employment contracts between the same parties. 17A C.J.S., Contracts, § 395 (1963).

The only allegation which may constitute and give rise to a grievable matter is the claim that the agency's actions in some regard are contrary to the stated policy of the Budget and Control Board, This allegation, as presently written, is so vague as to be meaningless. If there exists a disputed issue of fact as to whether the policy of the Budget and Control Board has been followed, the State Employee Grievance Committee could probably hear such a question. However, if there exists no disputed factual issue between the employees and the employer agency as to the application of the policy, but instead there is a question as to the interpretation of a given policy, it appears that the matter could be submitted directly by the agency to the Budget & Control Board pursuant to the provisions of S.C. Code Ann. § 8-11-240 (1976), which states that:

The Board shall exercise final approval on policies and programs incident to the administration of the provisions of this article (personnel administration) and shall hear appeals of appointing authorities relating to the administration of the provisions of Section 8-11-230 that are not otherwise provided for by other statutes.

In summary, the grievance applications from the employees of the South Carolina School for the Deaf & Blind do not allege any facts sufficient to constitute a grievance pursuant to the State Grievance Procedure Act, except to the extent, if any, it alleges that there exists a factual dispute concerning whether the School for the Deaf & Blind has complied with personnel administration policy of the Budget & Control Board. If there exists no factual dispute, but merely a question of interpretation of the meaning of a policy or rule of the Budget & Control Board as it applies to the School for the Deaf & Blind, it appears that the officials of the School for the Deaf & Blind may submit this directly for clarification or interpretation to the Budget & Control Board.

I apologize for the delay in responding to your request. If I can provide any further information, please let me know.
Sincerely yours,

Nathan Kaminski, Jr.
Assistant Attorney General

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