

1978 S.C. Op. Atty. Gen. No. 78-86 (S.C.A.G.), 1978 WL 34628

Office of the Attorney General

State of South Carolina

May 8, 1978

***1 SUBJECT: Retirement, Teachers**

After January 1, 1979, no teacher who has not reached age 70 may be involuntarily retired solely because of age.

Purvis W. Collins
Director
South Carolina State Retirement System

QUESTION:

What effect do the 1978 amendments to the Age Discrimination in Employment Act of 1967 have on § 9-1-1520, 1976 Code of Laws of South Carolina, which permits compulsory retirement of schoolteachers at age 65?

STATUTES AND CASES:

Age Discrimination in Employment Act of 1967, [29 U.S.C. §§ 621](#) et seq., as amended in 1978 by P.L. 95-256, 92 Stat. 189, § 9-1-1520, 1976 Code of Laws of South Carolina.

DISCUSSION:

The federal Age Discrimination in Employment Act of 1967 provides in pertinent part as follows:

It shall be unlawful for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

[29 U.S.C. § 623\(a\)\(1\)](#).

Prior to the 1978 amendments, the above prohibition against age discrimination applied only to individuals between the ages of forty and sixty-five. [29 U.S.C. § 631](#), P.L. 90-202, § 12. The 1978 amendments, however, provide that the prohibition against age discrimination shall extend to individuals between the ages of forty and seventy. P.L. 95-256, § 3(a). In other words, a person within the coverage of the Act may not be discharged because of age if he is under 70. This provision takes effect on January 1, 1979. P.L. 95-256, § 3(b).

The above provisions are applicable to the State and its agencies, instrumentalities, and political subdivisions; all are defined as 'employers' under [29 U.S.C. § 630\(b\)](#). Further, no exception to the rule is made for public elementary and secondary school teachers.

Section 9-1-1520, 1976 Code of South Carolina, provides that any public school teacher in service at age 65 shall be retired forthwith, with certain exceptions. It is the opinion of this Office that the plain language of the amended Age Discrimination Act together with the Supremacy Clause of the United States Constitution will, after January 1, 1979, render invalid the portion of § 9-1-1520 which permits compulsory retirement of teachers as early as age 65.

CONCLUSION:

After January 1, 1979, no teacher who has not reached age 70 may be involuntarily retired solely because of age.

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