

1978 WL 34984 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 17, 1978

*1 Dr. Jack S. Mullins
Director
Personnel Division
Budget and Control Board
1205 Pendleton Street
Columbia, SC 29210

Dear Dr. Mullins:

This is in reply to your request for an opinion concerning whether county employees who transfer to state employment pursuant to Act 690 of the 1976 Acts and Joint Resolutions, as amended, and 60 STAT Act No. ___ [R-664, S-653] (1978) must serve six months of satisfactory service in state employment before obtaining the right to appeal a grievance to the State Employee grievance Committee under § 8-17-30 of the 1976 Code of Laws, as amended. § 8-17-30 provides in part: 'There is hereby created the State Employee Grievance Committee constituted and appointed as hereinafter provided. Permanent state employees who have completed six months of satisfactory service or who, after an official extension not to exceed three months for marginal performance are given a satisfactory performance appraisal shall have the right to appeal to the State Employee Grievance Committee any grievances involving those issues specified in § 8-17-20 after all administrative remedies to secure acceptable adjudication within their own agency or department have been exhausted. If an employee does not receive an appraisal on the official appraisal date, he shall be considered to have performed in a satisfactory manner and to have grievance rights under this article.'

60 STAT Act No. [R-644, S-653] (1978) provides for retention of sick leave and seniority benefits for employees who retain the identical position in state employment that they had in county employment before the Judicial Reform Act (690 supra, as amended) was passed. 60 STAT Act No. ___ [R-644, S-653] (1978), effective June 23, 1978, provides: . . . and further finds it was not the intention of the General Assembly in legislating this transfer of employment that any person would lose sick leave and seniority benefits earned in faithful service as a county employee. . . . such transferred employees shall retain credit for prior years of county service which shall be applied to their employment status under the State Personnel and Classification System. The status of any employee under the provisions of this Act shall be determined by the Director of the State Personnel Division.

There was no definition of 'seniority' benefits under State law. Seniority rights are the rights of employees to certain preferential treatment based upon length of service. The general rule is an employee has no inherent right to seniority and service, and can have only such rights as may be based upon a contract or a statute or administrative regulations thereto. 51 C.J.S. Labor Relations § 14, see: [Trainmobile Company vs. Whirls, Ohio, 331 U.S. 401, 67 S. Ct. 982, 91 L. Ed. 1328 \(1947\)](#).

The State Personnel Manual, effective July 1, 1978, and enacted pursuant to the authority granted to the Budget and Control Board under § 8-11-230 of the 1976 Code of Laws, as amended, has several regulations where length of service affects decisions made by state agencies on public employees' employment and 'benefits'. The length of employment may be a prerequisite for eligibility for promotion or merit increase (§ 2 et seq.). State employees with more than ten years of service with state government earn additional annual leave (§ 3.08). In case of a reduction of force (personnel) by an agency, state seniority is considered along with job performance in determining which employees are laid off (§ 7.09E-3).

These provisions can reasonably be identified as 'seniority' rights in state government since they were enacted pursuant to a statute or regulation thereto. It is the opinion of this Office that the Director of State Personnel, under 60 STAT Act No. ___ [R-644, S-653] (1978), must:

*2 1. Credit a state employee transferred from county government pursuant to Act 690 of the Acts and Joint Resolutions of 1976 with all his/her sick leave accrued while a county employee, up to the limits authorized for state employees.

2. When considering the length of employment for promotion purposes, give the employee credit for years of faithful service as a county employee.

3. Grant additional annual leave as allowed under § 3.08 of the State Personnel Manual to those transferred employees if and when they have ten years of uninterrupted service as a county employee and state employee.

4. Credit the employee with the additional years of service in county government when determining the reduction in force plan mandated by § 7.09 E-3 of the Manual.

The conditions above apply only to those employees transferred pursuant to Act 690. It is the opinion of this Office that the legislature intended only for the State Personnel Division to give credit for prior years of county service in relation to any benefits that length of service may bestow upon a state employee.

It is further the opinion of this Office that all employees transferred under Act 690 must serve six months of satisfactory service as a state employee before being granted permanent status as a state employee. (§ 7.03 A-1, § 7.02 E, § 7.04 A of the Manual). During such period, the employee will normally serve in a 'probationary' status as outlined in the Manual.

The service of this probationary period is a prerequisite to obtaining the right to appeal a grievance to the State Employee Grievance Committee under § 8-17-30 of the 1976 Code of Laws, as amended. The reasonable construction of § 8-17-30 would require that each state employee must serve six months of satisfactory state service. It is therefore the opinion of this Office that those employees transferred under Act 690 must serve six months of satisfactory state service before having any rights to appeal grievances to the State Employee Grievance Committee as outlined above.

Very truly yours,

Frank H. DuRant
Assistant Attorney General

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