

1978 WL 35259 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 6, 1978

*1 Dr. Jack S. Mullins
Budget and Control Board
Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Mullins:

You have requested an opinion of this office as to whether the Legislature intended a terminated employee to pay both the employer's share and employee's share of health insurance premiums for the six month period of continuation coverage. One general rule of statutory construction provides that statutes which relate to the same thing are to be regarded as in pari materia. 73 Am.Jur.2d § 189 at 388. According to this rule, all relevant statutes are to be read together to uncover the legislature's intent, as expressed in separate parts of several statutes. 73 Am.Jur.2d § 191 at 390.

Section 38-35-946(3), 1976 Code of Laws of South Carolina as amended, provides as follows:

3. The terminated employee or member shall pay to the employer or policyholder the same premium for the six month continuation of coverage as would have been applicable had the group coverage not terminated as to such employee or member.

While this statute clearly states that a terminated employee shall pay 'the same premium', it is not clear from this statute what the premium would be 'had the group coverage not terminated as to such employee or member.' One interpretation might be that the employee would just have to pay the employee's share for six months continuation coverage. The problem with this interpretation is that the 1978 Appropriations Act does not expressly authorize expenditures for insurance premiums for persons other than active and retired employees and their dependents. The relevant proviso to the Appropriations Act, Act No. 644 of the 1978 Acts and Joint Resolutions of the South Carolina General Assembly provides:

Provided, Further, That the provision of group health, life, accidental death and dismemberment and disability insurance for active and retired employees of the state and the public school districts of South Carolina and their eligible dependents shall be in accord with such plans as may be determined by the Budget and Control Board to be equitable and of maximum benefit to those covered.

In [State v. Standard Oil Co.](#) 195 S.C. 267, 10 S.E.2d 778 (1939) the South Carolina Supreme Court said that the purpose of a proviso is to qualify a section of an enacting class.

The office of a proviso is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some ground of misinterpretation. 195 S.C. at 289.

Thus Section VIII of the 1978 Appropriations Act gave the Budget and Control Board funds for employer contributions and the proviso limited the persons eligible for such employer contributions to retired and active employees and to their dependents.

Also another rule of construction, expressio unius est exclusio alterius, leads to the opinion that if a statute mandates that a thing be done for certain employees and retirees and their dependents, the statute implies that it shall not be done for other persons. The legislature has not expanded the authority of the Budget and Control Board to make employer contributions for persons other than those covered.

*2 The relevant statutes must be examined to give effect to both Section 38-35-946(3) of the Code and to the proviso quoted above. It has been said that a law must be construed resolving any ambiguity in a statute in favor of the 'just, equitable and beneficial operation of the law.' [Crescent Manufacturing Co. v. S.C. Tax Commission](#), 129 S.E. 480, 496, 124 S.E. 761 (1924).

Although there may seem to be an inconsistency between requiring the terminated employee to pay the 'same premium' and the requiring the terminated employee to pay both the employee and employer contribution, there is no such inconsistency. As already stated the 1978 Appropriations Act does not authorize expenditures for terminated employees (such employees being neither active nor retired employees). Employees who are not active public employees for a period of 31 days or more are required to pay both employee and employer contributions in order to obtain health and accident coverage during the period of their inactivity. Terminated employees may be treated as inactive employees by being required to pay the full cost of their insurance coverage. By this interpretation, effect is given to Section 38-35-946(3) of the Code without violating the 1978 Appropriations Act.

In conclusion, the terminated employee who wants continuation coverage must pay for this coverage just as inactive employees, employees on leave without pay, are required to pay for their insurance premiums. Again, there is no authority for the Budget and Control Board to expend funds for persons who are not employees, retirees or dependents of such persons.

Sincerely,

Barbara J. Hamilton
State Attorney

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