

1975 WL 29514 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 19, 1975

***1 RE: Aiken Department of Education**

Mr. Herman E. Cain
Chief School Administrator
Edgefield County Department of Education
P. O. Box 608
Edgefield, South Carolina 29824

Dear Sir:

You have asked for an opinion on the legality of a plan by the Aiken Department of Education which requires mandatory retirement of teachers at age 65 or after 35 years of employment. The plan also provides that a person falling within the classification may on a year-to-year basis apply to continue his or her employment and such application would be accepted or rejected based upon the person being physically able to continue the duties of an educator.

The plan has a problem in that it may conflict with the Constitution's Fourteenth Amendment Equal Protection Clause. The Department has a perfectly valid interest in establishing policies which aim toward insuring that teachers are qualified. Thus the Department has determined that as a class persons over age 65 or persons who have taught for 35 years are not qualified. 'Equal Protection' means that the Constitution does not question a legislative body's right to make such classifications but that there must be some rational nexus between the classification-scheme as it is set up in the legislation and the purpose for which the legislation was passed. To be unconstitutional the classification has to be so lacking in any reasonable basis as to be arbitrary.

Thus applied to the Department's plan, the test of its constitutionality is whether there is any reasonable basis for the Department's finding that persons over 65 or with 35 years of teaching are not qualified. The reasonableness of this finding would rest upon medical opinion as to whether in fact older persons are likely to be incompetent. Since the question would thus turn upon medical data, it is important that the plan allows the members of the class to use medical opinion to rebut the presumption of their incompetence. In other words, the plan does not simply draw the line at 65 years old or 35 years of teaching but rather sets up a presumption of incompetence of persons who fall into that category and allows such persons to rebut this presumption by a showing of competence. This 'presumption rebutting' provision may well be the savior of the plan vis-a-vis the Equal Protection Clause. Therefore, if a person falling within the category were found by a physician to be incompetent and that person's application were still denied because of age, such denial would seem to be violative of the Equal Protection command. In other words, under the Fourteenth Amendment all competent individuals must be treated alike in this situation.

If you should have any further questions on the matter, please let us know.

Sincerely,

Wally Smith
Law Clerk

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