

1975 WL 28944 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1975

\*1 Mr. Grady E. Sanford  
Superintendent  
Spartanburg County School District Five  
Post Office Box 307  
Duncan, South Carolina 29334

Dear Mr. Sanford:

This Office has received your recent letter asking about the coverage and eligibility of non-contract school employees under the Federal 'Special Unemployment Assistance Program' (Title II of the 'Emergency Jobs and Unemployment Assistance Act of 1974' (H.R. 16596), P.L. 93-567, approved December 31, 1974.) Your question refers to food service workers, janitorial personnel and secretaries, etc. who do not have a contract and are apparently hourly wage earners. The stated purpose of that Act is to:

establish a temporary Federal program of special unemployment assistance for workers who are unemployed during a period of aggravated unemployment and who are not otherwise eligible for unemployment allowances under any other law.

This State has elected to come under the provisions of the program. You have specifically inquired whether an individual who applies for unemployment benefits must be terminated from employment by the school district, thus terminating employee benefits?

The determination of eligibility for unemployment compensation is the sole responsibility of the South Carolina Employment Security Commission. (Section 68-1, Code of Laws of South Carolina, 1962, as amended, see specifically Section 68-21.) Such determination of eligibility for unemployment compensation would not be binding on determination of employment for other purposes. Thus, a school district could determine eligibility of employment for purposes of insurance benefits regardless of any action taken by the Employment Security Commission. Factors upon which the Employment Security Commission bases their decision need not apply to a school district's determination. Historically most state employees have not been eligible for unemployment compensation and there is no statewide policy for determining when state employment is terminated. In this particular instance the State Personnel Division has specifically left such a determination to the individual school districts. Teachers, because of their contracts, and based on their service in 'an instructional research or principal administrative capacity in a school,' are specifically excluded from unemployment benefits pursuant to Section 68-102, Code of Laws of South Carolina, 1962, as amended.

Since the employees in question are hourly employees without contract and for whom there is no work during the summer, the Employment Security Commission may consider them unemployed for purposes of unemployment compensation. (Section 68-21, supra) It does not follow that the determination of eligibility for unemployment compensation would require a school to make a similar determination of unemployment for other purposes (e.g. insurance, etc.). The various school districts may, if they choose, consider them employees for purposes of insurance benefits when it is expected that these employees will return to full-time employment in the fall. This determination must be made by the individual school district.

\*2 You have also asked whether your school district may pay the additional sum required for expanded insurance coverage over that available for standard coverage for school district employees. The money involved would be county money and would properly be a subject for the Spartanburg County School District Five to resolve. There is no state law prohibiting such use of funds.

In any case, I would suggest consultation with your school district attorney before making a definitive conclusion and be guided by his instructions.

Very truly yours,

Stephen T. Savitz  
Assistant Attorney General

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