

7245 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 25, 2000

The Honorable Isadore Lourie
Chairman, South Carolina Museum Commission
1223 Pickens Street
Post Office Box 12089
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Chairman Lourie,

By letter of September 22, 2000, Vice Chairman Culbreath requested an opinion of this Office on the authority of the South Carolina Museum Commission to terminate the Director of the Commission.

The authority of the South Carolina Museum Commission is codified at South Carolina Code of Laws Section 60-13-10, et seq. Members of the Commission are appointed by the Governor and their terms under the statute are four years. One of the Commission's express powers is to "elect an executive officer for the Commission, to be known as the Director." S.C. Code Ann. § 60-13-40. The only other statute directly applicable to the Director states "the Director ... shall be the Director of the State Museum, when such facility comes into existence and his qualifications shall reflect an ability to serve in that capacity. Compensation for the Director shall be determined by the General Assembly." S.C. Code Ann. § 60-13-50. As opposed to the terms of the Commissioners, no term of Office for the Director is provided for by statute.

You question whether the Commission has the authority under these statutes to fire the Director of the Commission. As a preliminary note, § 60-13-40 has never been considered in the context of your question by our courts. However, until such time as there is a definitive ruling or Legislative clarification, I am of the view that, under the statute, the Commission does in fact have the authority to terminate the Director.

As a general rule, in the absence of constitutional or statutory provisions for term or tenure in state employment, state employees are regarded as holding their positions as the pleasure of the appointing authority. *Cf. State ex rel. Thompson v. Seigler*, 230 S.C. 115, 123, 94 S.E.2d 231 (1956), wherein our Supreme Court quoted the following passage from 16-A C.J.S. Constitutional Law, § 600, p. 705:

Chairman Lourie
September 25, 2000
Page 2 of 2

It is generally held that while public officers and civil service employees have rights which will be protected against infringement, those rights are not vested property rights protected by the state and federal constitutional provisions against the taking of property without due process of law; and the rule supported by the great weight of authority is that public office and government employ, and the emoluments thereof, are not property within the sense of the constitutional guarantees of due process of law.

Thus, unless state law-- defined to include agency regulations-- confers on the Director of the Commission an enforceable expectation of continued employment, i.e. a property interest in his job protected by the Fourteenth Amendment to the U.S. Constitution, he may be dismissed by the will of the Commission. Of course, no employee, even an at will employee, may be discharged because of an illegal or unconstitutional reason. See e.g. Perry v. Sindermann, 408 U.S. 593 (1972); Elrod v. Burns, 427 U.S. 347 (1976); Moshtaghi v. The Citadel, 314 S.C. 315, 443 S.E.2d 915 (1994).

The law in this State is that where one is employed for an indefinite term, either employer or employee may terminate the employment relationship at will. See Johnson v. American Railway Express, 163 S.C. 191, 161 S.E. 473 (1931); Shealy v. Fowler, 182 S.C. 81, 188 S.E. 499 (1936); Antley v. Shepherd, 340 S.C. 541, 532 S.E.2d 294 (S.C. Ct Ap. 2000). Therefore, assuming that the Director was employed for an indefinite term, and assuming further that the Commission has not, by rule or regulation (e.g. an employee handbook; see Bane v. City of Columbia, 480 F. Supp. 34 (D.S.C. 1979)) or by express agreement guaranteed the Director continued employment for a specific term, under state law, he has no contractual right to continued employment. Furthermore, this conclusion is consistent with previous opinions of this Office, which have opined that implicit in the authority to appoint, or elect in this instance, is the authority to remove. See e.g. Op. Atty. Gen. No. 89-41 (April 6, 1989).

As a final note, I would strongly advise the Commission to consult an attorney specializing in employment law to insure that all appropriate procedural steps are taken in the termination. Although it is the opinion of the Office that the Commission has the statutory authority to remove the Director, the particular details of the termination may implicate other applicable law concerning the fairness of the process.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General