

The State of South Carolina



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Office of the Attorney General

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September 14, 1988

Jeffrey B. Moore, Executive Director  
South Carolina Sheriffs' Association  
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Dear Jeff:

In a letter to this Office you referenced the recent case, Heath v. County of Aiken et al., Opinion No. 22871, filed May 23, 1988 and questioned whether such case applied to Section 4-9-30(7) of the Code as it existed prior to the amendment to such provision as enacted this year or does it affect the amended provision.

Section 4-9-30(7), prior to its amendment this year, stated that counties were authorized to:

... develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged by the administrator, elected official or designated department head shall be given a public hearing before the entire county council....

In Heath, the Supreme Court noted in a footnote that such provision was amended by the General Assembly since Sheriff Heath's declaratory judgment action was ruled upon by the lower court. In its decision, the Court held that deputies are not county "employees" for purposes of such section as it relates to

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personnel policies and that a county grievance procedure was inapplicable to deputies. However, the court further held that sheriff's department personnel other than deputies were "employees" for purposes of Section 4-9-30(7). The Court referenced that such statute provides a public hearing and possible reinstatement for "(a)ny employee discharged by the ... elected official...." Therefore, such department personnel other than deputies were entitled to a grievance hearing.

Pursuant to legislation signed in February of this year, Section 4-9-30(7) was amended. Such provision now authorizes counties to:

... develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established, a county employee discharged by the chief administrative office or designated department head must be granted a public hearing before the entire county council....

The title to such statute reads in part:

TO AMEND SECTION 4-9-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF COUNTY COUNCILS, SO AS TO CLARIFY REFERENCES AND DELETE OBSOLETE REFERENCES RELATING TO COUNTY GRIEVANCE PROCEDURES, TO PROVIDE THAT EMPLOYEES DISCHARGED IN COUNTIES HAVING GRIEVANCE PROCEDURES SHALL FOLLOW

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THOSE PROCEDURES AND IN THOSE COUNTIES NOT HAVING GRIEVANCE PROCEDURES THAT EMPLOYEES DISCHARGED BY THE CHIEF ADMINISTRATIVE OFFICER OR A DEPARTMENT HEAD MUST HAVE A HEARING BEFORE COUNCIL AT THE EMPLOYEE'S REQUEST....

An earlier draft of this amendment indicates that the title was to read:

TO AMEND SECTION 4-9-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF COUNTY COUNCILS, SO AS TO DELETE A REFERENCE TO AN EMPLOYEE DISCHARGED BY AN ELECTED OFFICIAL, AND TO ADD A SPECIFIC REFERENCE THAT AN EMPLOYEE DISCHARGED BY THE ADMINISTRATOR OR DESIGNATED DEPARTMENT HEAD SHALL FOLLOW THE GRIEVANCE PROCEDURES AS ESTABLISHED BY COUNTY COUNTY, BUT IF NO GRIEVANCE PROCEDURES ARE IN PLACE, TO ALLOW THE DISCHARGED EMPLOYEE TO REQUEST A HEARING BEFORE COUNTY COUNCIL....(emphasis added.)

It is clear from such earlier draft that it was intended that grievance procedures were to be limited to employees discharged by an administrator or designated department head. However, as stated above, the final legislation in its title did not limit its applicability specifically to employees of administrators or department heads.

Based upon our review, it appears that it was the intention of the General Assembly that grievance procedures not be provided for employees discharged by an elected official as referenced in Section 4-9-30(7). As stated, the legislation specifically refers to a grievance procedure for employees discharged by a chief administrative officer or designated department head in counties which do not have a grievance procedure. To read such statute as providing a grievance procedure for employees of elected officials in counties which do have a grievance procedure but not for such employees in counties which do not have such a procedure would be discriminatory. Moreover, the "employee discharged" who is given grievance rights appears from a careful reading of the entire provision to relate to those employees "in the county departments in which the employment authority is vested in the county government."

Therefore, it is the opinion of this Office that the recent decision of the State Supreme Court in Heath v. County of Aiken, is solely applicable to Section 4-9-30(7) as it read prior to its being amended this year by the General Assembly.

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However, with the amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7).

If there is anything further, please advise.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



ROBERT D. COOK  
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