

The State of South Carolina



Office of the Attorney General

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January 9, 1986

Larry W. Propes, Deputy Director
South Carolina Court Administration
P. O. Box 50447
Columbia, South Carolina 29250

Dear Larry:

In a letter to this Office you referenced that the 1985 State Appropriations Act provides that

"... it is the responsibility of all agencies, departments and institutions of state government, to provide at no cost and as a part of the regular services of the agency, department or institution such services as are necessary to carry out the provisions of Article 7, Chapter 17 of Title 44 of the 1976 Code (Judicial Commitment) ... state agencies are directed to furnish to the Judicial Department a list of their employees who are competent to serve as court examiners. The Judicial Department shall forward a copy of this list to the appropriate courts, and the courts shall utilize the services of such state employees whenever feasible. State employees shall receive no additional compensation for performing such services...." Section 155.

You indicated that a number of individuals in this State qualified to examine persons for mental illness work part time either on a permanent or temporary basis for a state agency. You indicated that the referenced proviso makes no distinction between permanent full time, permanent part time, and temporary full or part time state employees. You specifically questioned

Mr. Propes
Page 2
January 9, 1986

whether these private health practitioners, who work only part time for the State, may be paid for examinations and hearings performed under the Judicial Commitment Act when they perform these services, not as a state employee, but during their other private duty hours.

In a prior opinion of this office dated February 6, 1981, a copy of which is enclosed, the question was raised as to whether various individuals were state employees within the context of provisions of the 1980 State Appropriations Act dealing with judicial commitments, Section 4 of Act No. 517 of 1980. Specific reference was made to a provision which stated:

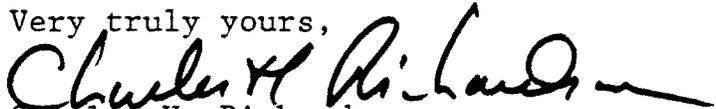
"... no money appropriated pursuant to Item VI, Judicial Commitment, shall be used to compensate any state employees appointed by the court as examiners, guardians ad litem, court reporters, or attorneys."

The opinion, noting that there was not a controlling definition of "state employee" within the Appropriations Act, stated that the referenced provision "... makes no distinction between full-time or part-time employees." The opinion did, however, distinguish between salaried employees and individuals retained pursuant to a personal services contract who did not receive a straight salary.

While the provisions in the 1980 and 1985 Appropriations Acts are not identically worded, it is our determination that the conclusion of the prior 1981 opinion would similarly be applicable to your question dealing with Section 155 of the 1985 Appropriations Act.

With best wishes, I am

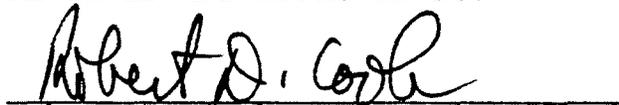
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions