

1984 WL 249843 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1984

*1 The Honorable Philip T. Bradley
Member
House of Representatives
312-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Bradley:

You have requested that this office advise you as to whether the superintendent of Greenville County Schools is entitled to a pay increase under Act 238, Acts and Joint Resolutions of South Carolina, 1983. This act provides for a promotion of local tax millage ‘. . . to be used for an across-the-board pay raise for all school employees . . .’ According to your information, this Board of Trustees has denied the superintendent a pay raise under Act 238.

In order to obtain this raise, the superintendent at least would have to be an ‘employee’ under Act 236. Case law recognizes a distinction between employment and an office. ‘Although every public office may be an employment, every public employment is not an office and . . . statutory provisions . . . referring to ‘employees’ . . . have generally been construed as not including public officers.’ 53 Am. Jur. 2d Public Offices and Employees § 11. Act 230 provides no express guidance as to whether the term ‘employee’, includes officers although many general statutes do provide direction as to this question for the purposes of those laws. See eg § 4-9-70(7); § 8-17-320 and 8-17-370; § 8-15-10, and § 9-1-10(4) of the Code of Laws of South Carolina (1976) and the amendments thereto. Because all of those general statutory provisions vary as to how they treat the term ‘employee’, they are of little guidance here. Thus, given this absence of direction otherwise, we believe that the general rule quoted above should apply to Act 236.¹ Therefore, the superintendent would not be an ‘employee’ under Act 236 if he is an officer.

‘. . . [A] position is a public office when it is created by law, with duties cast on the incumbent which involve some portion of the sovereign power and in the performance of which the public is concerned . . .’ 63 Am. Jur. 2d, supra at § 11. See State vs Crenshaw, 273 S.C. 475, 266 S.E.2d 61 (1980); Sanders vs Belue, 78 S.C. 171, 58 S.E. 762 (1907). Under this authority, the superintendent appears to be an ‘officer’. His position has the statutory title ‘Superintendent of Education’ and is vested with the powers of the County Superintendent of Education. See § 21-2805, Code of Laws of South Carolina (1962); Act 1153 of 1968 and § 59-13-10, et seq. of the Code of Laws of South Carolina (1976). Under his employment contract, he has broad administrative responsibility for district affairs. See Contract of September 24, 1981 (extended by separate agreement to August 15, 1985). Therefore, the Greenville Superintendent does appear to exercise some portion of the sovereign power and constitute an officer under the above authority. As an officer, the above authority indicates that he would not be considered an ‘employee’ under Act 236 so as to be entitled to the pay raise for which it provides.

*2 Of course, special facts surrounding an issue such as that addressed here, including any contract provisions, could affect the course of action that should be taken. Investigating all the facts concerning such a matter is not within the province of this office in issuing opinions. See Ops. Atty. Gen. (November 2, 1983 and December 12, 1983). Nevertheless, we hope that the above authority will be of assistance to you.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 We express no opinion as to whether this general rule should apply to any other statutes using the term 'employee'.
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