

1983 S.C. Op. Atty. Gen. 28 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-15, 1983 WL 142686

Office of the Attorney General

State of South Carolina

Opinion No. 83-15

May 16, 1983

**\*1 SUBJECT: Education-Teachers**

I. School Districts cannot reduce teacher salaries below the minimum schedule established according to the Education Finance Act.

II. School districts cannot reduce the length of the school year below the statutory minimum number of days as a means of lowering teachers' salaries.

III. Contract language providing for salary reductions and layoffs upon losses in funding or changes in course programming cannot be invoked unless reasonable under the circumstances.

IV. School districts cannot discharge teachers under contract provisions requiring loyal cooperation and harmonious working relationships unless the teachers' conduct otherwise constitutes sufficient cause for dismissal under statutory or constitutional provisions.

TO: The Honorable Harry A. Chapman, Jr.  
Senator  
Greenville and Laurens Counties

QUESTION I:

Under contract language permitting salary reductions upon loss of funding or other circumstances, may school districts reduce the salaries of their teachers below the minimum salary schedule?

OPINION:

The language in question reads as follows:

Loss or reduction in any amount of anticipated or appropriated state, local or federal funding may require a percentage reduction of salary, a reduction in the term of this contract (and pro rata reduction in salary) or a termination of this agreement. The term of the contract, or salary, also may be reduced, or the contract terminated, because of a declining student enrollment, an elimination or change in course programming, or a financial emergency.

This clause would not permit school districts to deviate from minimum salary schedules mandated by the Education Finance Act, § 59-20-10, [et seq. of the Code of Laws of South Carolina \(1976\)](#), as amended. Ops. Atty. Gen. (April 28, 1983).

QUESTION II:

Would such contract language permit school districts to lower salaries by reducing the number of days of school?

OPINION:

The minimum length of the school year is statutorily mandated. Act 466 § 28, Acts and Joint Resolutions of South Carolina, 1982. See also, § 59–21–20 of the Code. For the same reasons cited in the April 28, 1983 opinion, supra, the number of days of school may not be reduced as a means of lowering salaries.

QUESTION III:

Would such contract language permit the following action:

- A. Across-the-board reduction of teachers' salaries by 10% upon a loss of funding 1%?
- B. Application to federally paid teachers of across-the-board salary cuts for all district teachers when sufficient federal funds are available for the federal teachers?
- C. Teacher lay offs upon a loss in funding although sufficient funds are available from elsewhere to compensate the teachers.
- D. Lay off of a teacher due to a change in course programming if another position is available for which the teacher is qualified.

OPINION:

\*2 A. In South Carolina, school district boards of trustees have express authority to set teacher salaries. § 59–19–90(2), as amended. See § 59–25–710. ‘[W]hen the duty of fixing teachers' salaries is imposed upon school boards, their power to reduce the salaries of permanent teachers cannot be doubted provided that the power is exercised in good faith, reasonably, and without discrimination or arbitrariness, and provided that no attempt is made after the beginning of the school year to reduce salaries for that year.’ 68 Am.Jur.2d Schools § 157; see Cleeves v. Board of Education, 22 Cal.App.2d 183, 70 P.2d 645 (1937); Abraham v. Sims, 2 Cal.2d 698, 42 P.2d 1029 (1935). More recent cases have upheld mid-year pay reductions where authorized by specific contract language. Austen v. Benefield, 140 Ga.App. 96, 230 S.E.2d 16 (1976). See Ops. Atty. Gen. (September 23, 1982, by J. Emory Smith, Jr., Assistant Attorney General). Thus, the above contract language should permit such mid-year salary reductions, but only under reasonable circumstances.

Because the power of boards of trustees is restricted to reducing salaries when reasonable, contract provisions for reductions should be interpreted with reference to this standard. 68 Am.Jur.2d Schools § 143. Although the particular example that you have presented refers to reduction in funding of ‘any’ amount, the contract states only that such a loss ‘may’ result in reduction in salary. Because a salary reduction is not required by the contract, the provision must be read to mean that a salary reduction will be made when to do so would be a reasonable exercise of power by the board of trustees. Thus, a 10% salary cut could be made only if reasonably required by a 1% reduction in funding.

B. In another example, teachers whose salaries are entirely paid by the federal government would not appear to be reasonable subjects for an across-the-board salary cut applicable to all district teachers if sufficient federal funds were available for the federal teachers' salaries; however, federal law applicable to any such teachers should be checked to make sure that it would not require the federal teachers to be paid at the same level as the state funded teachers.

C. & D. Ample authority exists for mid-year termination of teachers when reduction in their numbers is justifiable even when no statute specifically authorizes dismissal for the reason asserted and existing statutory dismissal statutes enumerate other grounds. 68 Am.Jur.2d Schools § 168; 100 ALR2d 1141 § 48; Ehret v. School District of Borough of Kulpmont, 33 Pa. 518, 5 A.2d 188 (1939). These conclusions would not appear to be different in South Carolina. School District Boards of Trustees are given express authority to dismiss teachers: ‘. . . when good and sufficient reasons for so doing present themselves . . .’ § 59–19–90, as amended. Although the teacher employment and dismissal laws refer only to grounds for dismissal which are

personal to individual teachers rather than to economic or other circumstances, the above authority indicates that these statutes would not bar termination for valid financial, enrollment or programming reasons. See §§ 59–25–430 and 59–25–440 of the Code, as amended. See also Adams v. Clarendon County School District No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Thus, the contract language allowing mid-year terminations appears to be consistent with existing law provided that the language is applied in a reasonable manner.

\*3 Just as the provisions for salary reductions must be interpreted by standards of reasonableness, so must those for termination. Any exercise of authority to the contrary could impermissibly exceed the trustees' authority to discharge teachers for good and sufficient reasons. Therefore, lay-offs of teachers, when funds to pay their salaries could be obtained reasonably from other sources, would not appear to be permissible under the above authority. See also Act 466 § 28, p. 2943.<sup>1</sup> Similarly, a lay off of a teacher due to changes in course programming would not appear to be permissible if another position were available for which the teacher was qualified. See 100 ALR2d 1141, 1163 § 10.

QUESTION IV:

May a teacher be subject to discharge for violation of contract provisions requiring teachers to 'cooperate loyally with the school administration' or to 'work harmoniously with each member of the school faculty' if the conduct did not constitute a statutory ground for dismissal?

OPINION:

The above noted contract language must be read with reference to § 59–19–90(2) which authorizes trustees to discharge teachers for 'good and sufficient reasons.' 68 Am.Jur.2d Schools § 143. Therefore, this language would not permit districts to terminate a teacher except for a ground that would be reasonable under § 59–19–90(2). The grounds for dismissal would also have to fall within the terms of the Employment and Dismissal Act (§ 59–25–410, et seq., as amended) which was intended to prevent abuse of dismissal authority. See Adams v. Clarendon County, supra. Of course, the contract provisions also could not be used to justify a dismissal for constitutionally impermissible reasons.

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Footnotes

1 This provision requires that a teacher dismissed for economic reasons have priority for being rehired to fill vacancies for which he is qualified which occur within two years of his dismissal.  
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