

1981 WL 158058 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1981

\*1 Mrs. Darene Stankus  
Personnel Director  
City of Florence  
City-County Complex  
Drawer PP  
Florence, South Carolina 29501

Dear Mrs. Stankus:

This is in response to your letter of November 23, 1981, in which you requested this Office's opinion concerning the possible legal implications of the transfer of a black city employee returning from a leave of absence due to medical problems.

The facts, as presented in the attachment to your letter, are as follows:

'Employee 'X' (black male) is on leave of absence without pay status that resulted from a medical problem. The city physician originally stated, in writing, that employee 'X' not continue in his present position because of the swelling in his feet. As a result of the physicians recommendation, and in the best interest for the employee, Section 7.10 (pg. 19) of the Employee Handbook was initiated.

'The question has occurred, if the employee obtained a release from the city physician to return to work, could we consider the following option:

transfer employee 'X' from the Street Department to the Parks Department in exchange for an employee in the Parks Department (with or without Parks employee's input?) This is assuming employee 'X' agrees & pay, status, classification remain the same.'

You have indicated that your concern is two-fold: (1) whether the Parks employee might have a valid grievance and (2) whether there might be 'hidden legal ramifications' in any such transfer as it relates to employee 'X'.

It is this Office's opinion that if, as you assume, employee 'X' voluntarily agrees to a transfer from the Streets Department to the Parks Department and his pay, status and classification remain the same, such a transfer may be effected. If the Parks Department employee with whom employee 'X' will swap jobs is likewise agreeable to being transferred from Parks to the Street Department and his pay, status and classification remain the same, it is unlikely that either employee would file a grievance concerning the transfer and even less likely that any such 'grievance' would be sustained. Indeed, it is doubtful that a voluntary transfer even constitutes a grievance within the scope of the city's Grievance Procedure. See, for example, the County and Municipal Employees Grievance Procedure Act (§ 8-17-110 et seq., South Carolina Code, 1976), pursuant to which the city's Grievance Procedure was enacted, which provides, in pertinent part: 'As used in this article, grievances may include, but shall not be necessarily limited to, dismissal, suspensions, involuntary transfers, promotions and demotions.' Id., § 8-17-120 (emphasis added).

If the affected Parks Department employee is not agreeable to the proposed transfer, the transfer would, of course, be involuntary as to him and would clearly be grievable under the City of Florence Grievance Procedure. 'Grievance' is defined in the city's Grievance Procedure Manual 'as any cause of distress arising out of, or in conjunction with job related activities affording reason for complaint or resistance by an employee[.]' except matters pertaining to compensation. An involuntary transfer falls

squarely within this definition. Assuming that his transfer was not for medical reasons (Section 2.1b. (2), Handbook) or for reasons of loss of eligibility to perform his job (Section 9.7, Handbook), the Parks Department employee might well prevail in a grievance proceeding unless his involuntary transfer is supportable under Section 3.5 of the Handbook, authorizing intra-Division transfers of employees by Division heads for specified reasons.

\*2 As to your concern about possible 'hidden legal ramifications' involved in the transfer, both Title 7 of the Civil Rights Act of 1964, as amended, and the South Carolina Human Affairs Law ([Section 1-13-10 et seq., South Carolina Code](#), 1976, as amended) prohibit discrimination on the basis of race in job transfers. Cf. [Rodriquez v. Board of Education of Eastchester Union Free School District](#), 620 F.2d 362, 367 (2d. Cir. 1980) (involuntary transfer on account of sex of employee is prohibited employment practice). See, generally, 1 Larson, [Employment Discrimination](#), § 25.20 at p. 6-49 (1980). These laws, however, would prohibit an involuntary transfer of a black employee only if the motivating factor in the transfer is the employee's race. Thus, if an employer transfers a black employee but, in the same circumstances, would not have transferred a white employee, the transfer is racially motivated and is a prohibited employment practice under both state and federal fair employment laws. Where race is not the motivating factor in an other than voluntary transfer of an employee, however, such transfer is not prohibited by either Title 7 of the federal Civil Rights Act or by the South Carolina Human Affairs Law.

I hope this information sufficiently answers your questions and addresses your concerns. If I can be of further assistance, please call on me.

Sincerely,

Vance J. Bettis  
Assistant Attorney General

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