

1979 S.C. Op. Atty. Gen. 5 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-1, 1979 WL 29007

Office of the Attorney General

State of South Carolina

Opinion No. 79-1

January 3, 1979

**\*1 SUBJECT: Public Employees' Exemption from State Employee Grievance Procedure**

1. Whether an employee is classified or unclassified has nothing to do with whether he or she may participate in the State Employee Grievance Procedure.
2. Agency, institution and division heads are exempt from the State Employee Grievance Procedure.

TO: Dwight F. Drake  
Director of Transition

QUESTIONS:

1. What is the significance of an employee being classified or unclassified with regard to his or her right to participate in the State Employee Grievance Procedure?
2. May agency, institution or division heads participate in the State Employee Grievance Procedure?

LEGAL AUTHORITY:

1976 Code of Laws of South Carolina, as amended, Sections 8-17-10 through 8-17-50. Section 0:01, 0:02 and 0:03 State Personnel Manual. Webster's New World Dictionary, second college edition.

DISCUSSION:

ONE

Whether a public employee occupies a classified or unclassified position has nothing to do with whether he or she may participate in the State Employee Grievance Procedure. Unless exempted from coverage of the State Employee Grievance Procedure Act, Sections 8-17-10 et seq. all permanent state employees may participate in the grievance procedure. A permanent state employee is 'a full or part-time employee whose permanent retention has been approved at completion of a probationary period.' See definition of permanent employee, State Personnel Manual at 0:02. A probationary period must be for at least six months duration. See definition of probationary period, State Personnel Manual at 0:03. Thus, a public employee who has successfully completed a probationary period, thereby becoming a permanent employee, has the right to present a grievance to the State Employee Grievance Committee unless that employee holds a position not covered by the Act.

TWO

Section 8-17-50 of the 1976 Code of Laws of South Carolina, as amended, lists the positions that are exempt from coverage under the State Employee Grievance Procedure Act. Section 8-17-50 provides in part:

The provisions of this article shall not apply to: . . . 2. Executive assistants, administrative assistants and secretaries on the Governor's immediate staff; . . . 8. Those agency, institution or division heads appointed by the Governor . . .

In [Purdy v. Moise](#), 223 S.C. 298, 304, 75 S.E. 2d 605, 608 (1953), the South Carolina Supreme Court said:

The generally accepted meaning of words used in statutes or ordinances are to be accepted unless such words have a well recognized meaning in law; if so, they are presumed to have been used in that sense.

Accordingly, generally accepted meanings must be given to words in the above quoted section of the Act unless other well recognized legal definitions exist. This, the Governor's immediate staff would include such public employees as the press secretary, schedule secretary, personal secretary and other persons who are generally assumed to have daily relations with the Governor.

\*2 In the absence of legal definitions, generally accepted meanings must also be given to the key words of provision 8 above i.e., to 'agency', \* 'institution' and 'division.' The following definitions have been obtained from [Webster's New World Dictionary](#), 2d College Edition:

Agency—an administrative division of government with specific functions.

Division—anything separated or distinguished from the whole or from the larger unit of which it is a part.

Institution—an organization having social, educational or religious purpose, as a school, church, hospital, reformatory, etc.

If these definitions are utilized, determining who is an agency or institution head can be made with ease. A division head, as mentioned in provisions 8 of 8-17-50, includes a public employee who is appointed by the Governor and who heads an administrative unit that is separable or distinguishable from the larger unit of which the division is a part.

#### CONCLUSION:

Both classified and unclassified state employees may present grievances to the State Employee Grievance Committee so long as that employee is a permanent employee who has complied with the rules of the appeals procedure and whose employment position has not been exempted from coverage under the State Employment Grievance Procedure Act by Section 8-17-50 of the Code.

The Governor's immediate staff and agency, institution or division heads appointed by the Governor have no right to participate in the State Employee Grievance Procedure, as they are expressly exempted from coverage under the Act by Section 8-17-50(2) and (8).

Barbara J. Hamilton  
State Attorney

#### Footnotes

\* Although the terms 'institution' and 'division' are not defined in the [State Personnel Manual](#), the term 'agency' is defined at 0:01 as, 'any department, institution, board, commission, council, division, bureau, center, school, hospital or other facility that is engaged in the business affairs of state government. Multi-facility agencies operating under central administrative control shall be considered to be one state agency.'

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