

1977 WL 37208 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1977

***1 Re: Back Pay Award**

Colonel W. J. Seaborn
Director
Law Enforcement Division
State Department of Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 29202

Dear Colonel Seaborn:

You have recently asked this Office for its opinion as to whether a suspended patrolman who has now resigned from the Highway Department is entitled to various kinds of compensation possibly earned during the period of his suspension. It is the opinion of this Office that the former officer is not entitled to any compensation.

Section 8-11-230(6) of the 1976 Code of Laws of South Carolina, as amended, provides that the Budget and Control Board is authorized and directed to:

... develop policies and programs concerning leave with or without pay, hours of work, fringe benefits (except State retirement benefits), employee/management relations, performance appraisals, grievance procedures, employee awards, dual employment, disciplinary action, separations, reductions in force, and other conditions of employment as may be needed.

Pursuant to this authority the Budget and Control Board has promulgated the State Personnel Rules Manual which provides that 'all suspensions shall be without pay.' Personnel Rules Manual Section 5.02 at p. V:01. This provision is apparently applicable only to punitive or disciplinary suspensions. There is no rule, regulation or statute pursuant to which salaries can be paid for periods of suspension. In the opinion of this Office, Mr. Bradley cannot now be paid compensation for the period during which he was under suspension. It is noted that he was maintained in a compensated status for approximately two months following his indictment on September 14, 1978, upon a charge of obstruction of justice. A nolle prosequi was entered to this indictment on April 13, 1979, upon the stated ground(s):

This nolle prosequi should not reflect a comment on the defendant(s) actions as legal or illegal, proper or improper, but rather a judgment by the prosecutor that the evidence at hand did not warrant further prosecutorial action. Serious questions of credibility, a lack of corroborating witness(s) and or documentation caused in whole or in part by the untimely death of a codefendant and another potential state witness left [the prosecutor] with no alternative but to decline prosecution.

Section 8-11-30 of the Code provides that it is illegal to pay an employee salary that is not due. It is the opinion of this Office that Mr. Bradley may not be compensated now for the period during which he was under indictment.

Sincerely,

Barbara J. Hamilton
State Attorney

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