

1976 WL 30770 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1976

**\*1 In Re: Terminal Leave, Elected Officials, Right to Receive**

Honorable John H. Mills  
Comptroller General  
Post Office Box 11228  
Columbia, South Carolina 29211

Dear Mr. Mills:

You have inquired whether or not elected officials of the State with State-wide authority, such as the State's Constitutional Officers, are entitled to receive payment for unused leave [terminal leave] under Section 3 of Act 997 of 1974.

Section 2 of the Act reads in part:

‘Any permanent full-time state employee shall be entitled to annual leave with pay - - -.’

Section 3 of the Act provides that a maximum of forty-five days accumulated but unused annual leave may be taken by a retiring employee in a lump sum. This is popularly known as ‘terminal leave’.

It is held that a measure of liberality should be used in defining ‘employee’ to the end that in doubtful cases the subject with not be deprived of the benefits of the Act. [Meek v. Julian](#), 32 N. E. 2d 737; 30 C.J.S. 673, Employee.

In [State ex rel Sheets v. Fay](#), 196 N. W. 2d 651, 54 Wis. 2d 642, cited at 14 Wand P.80, it was held that the term ‘employee’ is broad enough to cover elected officials. [Sheets](#) was involved with a claim for retirement benefits.

It is noted that the State's Workmen's Compensation law [Section 72-11, 1962 Code of Laws of South Carolina] specifically excludes from its coverage those officers ‘elected by the people, or by the General Assembly, or appointed by the Governor’. Had the General Assembly intended to exclude those officers from Act 997, it is fair to assume that specific words of exclusion would have been used - - - as was done in the Workmen's Compensation Law. Act 997 [Section 1] specifically exempts ‘teaching personnel and officials of academic rank at state-supported institutions of higher learning.’

Elected officials are entitled to retirement benefits under the South Carolina Retirement System [Section 61-1, 1962 Code].

In the absence of any established rule of statutory construction or law requiring that elected officials be treated differently with respect to laws granting employment benefits, and in view of the foregoing, it is my opinion that elected officials of the State are entitled to receive terminal leave pay under Act 997 of 1974 [Section 3].

Yours very truly,

Joseph C. Coleman  
Deputy Attorney General

1976 WL 30770 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.