

1976 S.C. Op. Atty. Gen. 226 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4389, 1976 WL 23007

Office of the Attorney General

State of South Carolina

Opinion No. 4389

July 7, 1976

*1 In light of National League of Cities v. Usery — U.S. — 44 L.W. 4974 (6/24/76), the 1974 Wage and Hour Amendments to the federal Fair Labor Standards Act do not apply to school districts unless they have been incorporated by reference in State law, local rules and regulations, or individual employment contracts.

TO: Dr. Cyril B. Busbee
State Superintendent of Education

QUESTIONS PRESENTED:

1. Will school districts be required to pay a minimum wage of \$2.20 per hour during FY 76–77?
2. The minimum wage is scheduled to increase to \$2.30 per hour on January 1, 1977. Will this increase have any impact on employees of school districts?
3. Will employees of South Carolina School districts be required to be paid any overtime wages?
4. How should that portion of Section 31 of the General Appropriations Bill, as passed by the Senate which states the rate of compensation for school bus drivers be interpreted?

AUTHORITIES:

National League of Cities v. Usery — U.S. — 44 L.W. 4974 (6/24/76). 1975 Act No. 237, Section 29, Page 402, Statutes at Large of South Carolina. Section 21–230 and 21–230.2, Code of Laws of South Carolina. Section 2.01, Sutherland Statutory Construction.

DISCUSSION:

1. As a result of the recent United States Supreme Court decision of National League of Cities vs. Usery, *supra*, the federal minimum wage law no longer applies directly to the states and political subdivisions as employers. The absence of this federal requirement means that there is no minimum wage for school district employees unless one is set by State statute, local regulation, or contract. There is no general State law requiring a minimum wage for school district employees; however the annual Appropriations Act (1975 Art. No. 237, *supra*) has in the past set a minimum wage for school bus drivers: ‘That for the fiscal year 1975–76 the compensation of school bus drivers shall not be less than the minimum rate provided for under the Federal Fair Labor Standards Act, or Two Dollars (\$2.00) per hour whichever is greater.’ (The Act for 1976–77 raises it to \$2.20.) This exception for school bus drivers appears to be the only one for school district personnel. Local school board regulations and contracts with employees should be checked for any provisions setting minimum wages and/or references to such minimum standards as the Federal Fair Labor Standards Act.

2. The increase of the minimum wage under the federal Fair Labor Standards Act to \$2.30 per hour on January 1, 1977, will effect school bus drivers, but will not effect other district personnel unless local regulations or contracts provide otherwise.
3. Since the Fair Labor Standards Act does not apply to school districts and the State statutes are silent as to overtime wages, any such requirements would be found in local regulations and/or contracts.
4. That section of the Appropriations Act setting the compensation for school bus drivers is presumed valid. Section 2.01, Sutherland Statutory Construction.

CONCLUSION:

*2 Minimum wage and overtime requirements for local school districts are no longer governed by federal statute, but State statutes and local regulations and contracts should be checked for provisions establishing standards.

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