

The State of South Carolina

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Office of the Attorney General

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April 3, 1989

The Honorable Michael T. Rose  
Senator, District No. 38  
606 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Rose:

You have asked us to consider the following hypothetical situation. A county employee who possessed a written contract resigned from employment prior to the expiration of his contract. Pursuant to the contract, the employee possessed no contractual right to severance pay for voluntary resignation. The employee's resignation was completely voluntary and in no way constituted an involuntary termination. The employee received a cash payment denominated severance pay and also received certain leave payments which may have been in excess of the amount to which he was entitled by the agreement. The public funds for severance pay which were paid to the employee by county council were not part of any good faith settlement of a legal dispute between council and the employee, nor were they liquidated damages for an involuntary termination. You wish to know whether such payments to the employee, based upon these factual assumptions, would violate any provision of state law.

At the outset, it is necessary to restate the position and policy of this Office regarding factual determinations. Of course, as we have stated previously,

[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions. Unlike a fact-finding body such as a legislative committee, an administrative agency or a court, we do not possess the necessary fact-finding authority and resources required to adequately determine...factual questions.....

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This policy is particularly appropriate in contractual matters because oftentimes the facts involved will be controlling. Thus, we may only assume facts as presented to us and we make no comment upon or attempt to resolve any particular factual disputes which may be present here. We now turn to the questions you have raised based upon the facts you have asked us to assume.

Article III, Section 30 of the State Constitution provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law ....

"Extra compensation" as used in Article III, Section 30 has been defined as "any compensation over and above that fixed by law or contract at the time the service was rendered." State ex rel. McLeod v. McLeod, 270 S.C. 557, 243 S.E.2d 446 (1978). Even though Article III, Section 30 by its terms prohibits only action by the General Assembly, this Office has concluded that this constitutional provision also serves to limit political subdivisions, such as counties, at least in the powers delegated to them by the Legislature. See, 1979 Op. Atty. Gen., No. 79-96, p. 133 (July 19, 1979). In addition, Section 4-11-170 of the Code of Laws of South Carolina (1976) (as amended) specifically prohibits a county council from granting extra compensation to an employee as follows:

No member of the governing body of any county shall vote for an extra allowance to any person who is paid by salary, nor shall the treasurer of any county knowingly pay to any such person any extra allowance.

Moreover, it is well recognized that whenever public funds are expended, such expenditures by a public body must be for a public, and not a private, purpose. See, Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975); Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Article X, Section 11 of the South Carolina Constitution.

Based upon the foregoing provisions of law, this Office has repeatedly concluded that bonus payments, retroactive compensation or severance pay are violative of these provisions where such uses of public funds were not fixed by law at the time services were

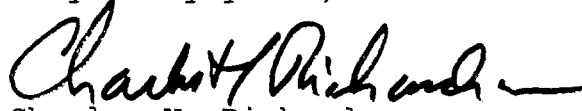
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rendered by the public employee and thus truly constituted "extra compensation" as defined by our Constitution. See, Op. Atty. Gen. September 29, 1981; 1958 Op. Atty. Gen., p. 173, (July 14, 1958); 1955 Op. Atty. Gen., p. 245 (February 25, 1955); 1979 Op. Atty. Gen., No. 79-96, p. 133 (July 19, 1979); Op. Atty. Gen., October 10, 1985; Op. Atty. Gen., November 15, 1985.

In the opinion issued October 10, 1985, we concluded that where an individual had voluntarily resigned, where there existed no contract authoring severance pay, where no future services were to be rendered by the employee in consideration of the severance pay and where the public employer was not purchasing or "buying out" the contract upon involuntary termination, "severance pay to a public employee is prohibited by Article III, Section 30 of the State Constitution." See, Op. Atty. Gen., November 15, 1985. As you have presented the question to us, the facts as stated are virtually identical and the October 10, 1985 opinion would be controlling. Thus, we believe a court would conclude that the payment in question violates Article III, Section 30 as well as Section 4-11-70. Moreover, where a public body pays an individual public funds beyond those specified in the employee's contract and where such payments are not deemed as a "buy out" of the contract or a good faith settlement of a legal dispute, such payments would likely be found also to be the expenditure of public funds for a private purpose and likewise prohibited by the State Constitution. See, Elliott v. McNair, supra.

If I can be of further assistance, please let me know.

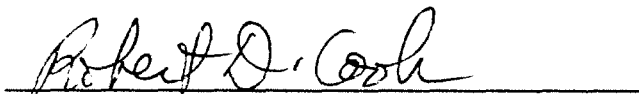
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/ss

REVIEWED AND APPROVED BY:



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