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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMMASTER
ATTORNEY GENERAL

August 2, 2004

The Honorable Glenn F. McConnell
President *Pro Tempore*
The Senate
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

In a letter to this office you raised a question on behalf of your constituent, Dr. Jan Temple, who formerly held a faculty position at the Medical University of South Carolina ("MUSC"). In your letter you asked whether an individual who is hired as a faculty employee at MUSC but who is not granted tenure status remains in the category of a classified employee.

Dr. Temple has forwarded correspondence to this office for our review in answering your question. That correspondence reflects Dr. Temple's faculty appointment status as associate professor with MUSC. While tenure status was considered in various capacities, apparently Dr. Temple was never granted tenure. Later correspondence indicates that Dr. Temple served in a contract status with her contract eventually not being renewed for a subsequent academic year. Therefore, for purposes of this opinion, it is assumed that Dr. Temple was granted nontenured faculty status with MUSC. Of course, this office cannot in an opinion investigate facts and thus must rely on the presentations made in requesting an opinion.

Pursuant to S.C. Code Ann. Sections 8-11-210 et seq. (1986), provisions for state personnel administration are provided. By Section 8-11-210, a State Personnel Division under the State Budget and Control Board is established

...to administer a comprehensive system of personnel administration responsive to the needs of the employees and agencies and essential to the efficient operation of State Government. It shall be applicable to all State agencies, departments, institutions, boards, commissions and authorities, except as may hereinafter be exempted.

By Section 8-11-230 the State Budget and Control Board was authorized to

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establish procedures for the regulation of compensation of all State employees where not otherwise regulated directly by the General Assembly. Such procedures and regulations shall distinguish between two categories of positions, classified and unclassified. A uniform Classification and Compensation Plan shall be provided for such regulation of all positions in the classified service. Such additional procedures shall be provided as in its judgment adequately and equitably regulate unclassified positions.

Pursuant to Section 8-11-270, the classification and compensation plan authorized was deemed not applicable to "academic personnel" and "such other personnel employed by the State institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the State Budget and Control Board". The term "academic personnel" is defined by Section 8-11-220 as

...presidents, provosts, vice-presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning, or medical institutions of education and research.

Such exclusion for "academic personnel" and persons employed by "medical institutions of education" appear to argue against Dr. Temple's being covered by classifications governing other State employees.

The State Employee Grievance Procedure Act of 1982, S.C. Code Ann. Sections 8-17-310 et seq. (1986 and Supp. 2003), creates a procedure for specified grievances for certain permanent state employees. That Act, however, contains specific statutory exceptions. Exemptions from applicability of the grievance procedure are set forth in Section 8-17-370. Included in the exemptions are

(10) teaching or research faculty, professional librarians, academic administrators or other persons holding faculty appointments at a four-year post-secondary educational institution, including its branch campuses, if any, as defined in Section 59-107-10....

S.C. Code Ann. Section 59-107-10 (2004) includes the Medical University of South Carolina among the state supported institutions of higher learning included in its provisions. Again, the exemption for individuals in an academic category is not supportive of Dr. Temple's being considered a classified employee in a permanent position.

Regulations of the Office of Human Resources may also be considered. Included in the regulations are provisions categorizing certain positions as "unclassified positions". Pursuant to the regulation of the State Budget and Control Board, R. 19-706.01,

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A. An unclassified position is a full-time equivalent (FTE) position that has been assigned to an unclassified State title and falls under one of the following categories...academic personnel...

Such regulation further provides that positions in the category of "unclassified other" include "such other personnel employed by the institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the Budget and Control Board."

Consistent with such, it appears that Dr. Temple, who held a nontenured faculty position with MUSC, would not have been considered a classified employee at MUSC. None of the provisions cited above are supportive of a conclusion by this office that she should have been considered a classified employee in a permanent position inasmuch as academic personnel are generally exempt from being considered as such.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General

cc: Jan Z. Temple, Ph.D.
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