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June 20, 1990

The Honorable Charles E. Dalton
Chairman, South Carolina Highways and
Public Transportation Commission
Post Office Box 8
Pickens, South Carolina 29671

Dear Mr. Dalton:

By your letter of June 12, 1990, you have advised that Section 57-3-470 of the South Carolina Code of Laws provides for appointment of a State Highway Engineer by the State Highways and Public Transportation Commission. That statute further provides that the State Highway Engineer serves "at the pleasure of the Commission." You further state that the State Employee Grievance Procedure Act, Section 8-17-310 et seq., authorizes permanent state employees who are dismissed from employment to appeal their dismissal to the State Employee Grievance Committee, which may overturn a dismissal and order an employee reinstated. The State Employee Grievance Procedure Act exempts certain employees from its coverage, but you state that it does not appear that the State Highway Engineer falls within any of the enumerated exemptions.

On behalf of the State Highways and Public Transportation Commission, you have requested our opinion as to whether the State Highway Engineer would be entitled to the grievance rights afforded by the State Employee Grievance Procedure Act in the event the Commission voted to dismiss him.

To date, our Supreme Court has examined the interrelationship between so-called "pleasure" statutes and "grievance" statutes on several occasions. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) is the landmark decision in this area. Rhodes involved the discharge of a deputy sheriff who, by statute, served at the pleasure of the sheriff. In holding that the subsequently enacted county and municipal employee grievance procedure did not serve to limit

a sheriff's "pleasure", the Court stated:

Statutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit.

There was no reference or implication in the statutes governing county and municipal employee grievances to the statutes relative to a deputy's service at the pleasure of the sheriff. Thus, the deputy served at the pleasure of the Sheriff and effectively had no grievance rights.

Discharge of an investigator by a solicitor and a resulting grievance were considered in Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985). In discussing the interplay of a statute providing that investigators (among other positions) employed by a solicitor serve at the solicitor's pleasure and Section 4-9-30(7) which provides certain grievance procedures, the Court concluded that the specific statute concerning solicitors prevailed. The Court cited Rhodes v. Smith, supra, as direct support for its conclusion.

In Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988), the Court again addressed the interrelationship of the sheriff's "pleasure" statute and a grievance statute, this time, Section 4-9-30(7), which had not been considered in Rhodes. In Heath, the Court reiterated the Rhodes rationale: ¶

The statutory grievance procedure is similarly inapplicable to deputies. First, as stated above, deputies are not "employees" for purposes of Section 4-9-30(7). Next, the statutes establishing the relationship between sheriff and deputy should not be "considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." Section 4-9-30(7) is general; it "speaks in a broad generalization referring only to elected officials." Anders v. County Council, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). In Anders, we held that Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his "pleasure".

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We therefore reject the argument that Section 4-9-30(7)'s grievance hearing limits a sheriff's "previously unbridled pleasure." Rhodes v. Smith, supra. Nothing in the statute itself implies such a limitation was intended by the legislature.

368 S.E.2d at 906

Finally, the Court in Botchie v. O'Dowd, _____, 384 S.E.2d 727 (1989) reiterated its view that specific "pleasure" statutes are generally not controlled by subsequent general grievance enactments. There, the Court noted that any argument that deputy sheriffs were entitled to a termination hearing pursuant to the provisions of Section 4-9-30(7) had been "put to rest in Heath" 384 S.E.2d at 730.

Thus, on four separate occasions, the Court has refused to consider specific "pleasure" statutes as being controlled by more general grievance provisions. Such strong precedent from our Court is difficult to overlook and until our Court rules otherwise, we cannot do so here.

It could perhaps be argued that the thrust of the foregoing cases is that the employer in those instances has been an elected official, not one appointed by the Governor, General Assembly or some other official. But Rhodes and the other cases referenced above seem to rely not on the fact that the employer is an elected official, but on the idea that specific "pleasure" statutes are not to be considered repealed or amended by general grievance provisions unless a legislative intent to do so is evident. Rhodes, supra.

Finally, with respect to the argument that the State Employee Grievance Act contains a number of exemptions, none of which appear to apply to the Chief Highway Engineer, such an argument does not appear dispositive here. Section 4-9-30(7), considered by the Court in at least three of the cases cited above, also contains certain exemptions. Nevertheless, the Court concluded in each of those instances that the "pleasure" statute still controlled.

Section 57-3-470 provides as follows with respect to the State Highway Engineer:

There shall be a State Highway Engineer. The State Highway Engineer shall be the administrative head of the engineering division and, as such, shall direct the highway engineering work of the Department and the activities of

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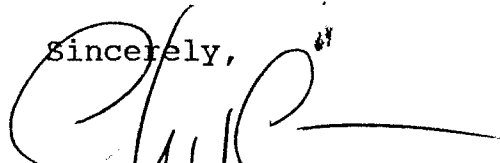
said engineering division. The Engineer shall be appointed by the Commission to serve in office at the pleasure of the Commission. (emphasis added).

It is evident that the General Assembly has placed great significance upon the importance of the appointment by the Highway Commission of the Chief Highway Engineer, and, accordingly, intended to vest broad discretion in the Commission, not only as to the particular individual appointed Chief Engineer, but also as to whether or not that individual is retained by the Commission. The General Assembly has mandated that the Engineer "shall direct the highway engineering work of the Department" This being the case, it would appear that the Legislature viewed the Chief Engineer in much the same agency relationship to the Department and the Commission as the deputy sheriff is to the sheriff.

In conclusion, in light of four previous Supreme Court decisions where our Court has concluded that a specific "pleasure" statute prevails over a more general grievance act, we cannot conclude that the "pleasure" portion of Section 57-3-470 has been altered by Section 8-17-310 et seq. We have found no South Carolina case authority otherwise. Accordingly, until the Supreme Court concludes otherwise, we believe the Chief Highway Engineer serves at the "pleasure" of the State Highway Commission.

With kindest regards, I am

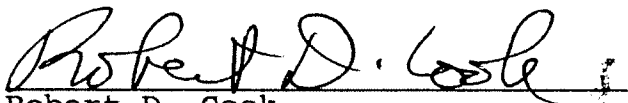
Sincerely,



Edwin E. Evans
Deputy Attorney General

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REVIEWED AND APPROVED BY:



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