

# The State of South Carolina



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Attorney General

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May 17, 1991

The Honorable C. Lem Harper  
Member, South Carolina Employment  
Security Commission  
Post Office Box 995  
Columbia, South Carolina 29202

Dear Mr. Harper:

With reference to an opinion rendered at your request on June 28, 1989, concerning your offering for reelection for another term on the South Carolina Employment Security Commission and continuing to serve the remainder of the term for which you had been elected notwithstanding your age, you have asked whether that opinion still reflects the opinion of our Office as to that issue. You have further inquired as to whether there would be any legal impediment as to your offering for and, if elected, serving an additional term on the Employment Security Commission.

As noted in the opinion of June 28, 1989 and in the enclosures thereto, we were of the opinion that the federal Age Discrimination in Employment Act would supersede the inconsistent portions of S.C. Code Ann. § 9-1-1530 as to a mandatory retirement age. We have reviewed the relevant federal and state laws and found that those laws have not been amended in the portions relevant to your inquiry.<sup>1/</sup> The interpretation given the federal and state laws is consistent with opinions of other attorneys general rendered subsequent to our opinion of June 28, 1989 (see LA AG No. 90-644 dated January 15, 1991; AZ AG No. 190-024 dated March 2, 1990; and LA AG No. 89-536 dated December 29, 1989) and at least one judicial interpretation (E.E.O.C. v. State of Vermont, 904 F.2d 794 (2d Cir. 1990)). Therefore, we believe the opinion issued to you on June 28, 1989, still reflects the current laws and thus remains the opinion of this Office.

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<sup>1/</sup> 29 U.S.C. § 623(g) was repealed on December 12, 1989 by P.L. 101-239, 103 Stat. 2233. However, this repeal had no effect on the issues relative to federal law superseding inconsistent state law relative to a mandatory retirement age.

The Honorable C. Lem Harper  
Page 2  
May 17, 1991

Based on the foregoing, we know of no legal impediment, based on your age, which would preclude your offering for reelection of the South Carolina Employment Security Commission and, if elected, your so serving. The opinion of June 28, 1989 is still a valid opinion.

With kindest regards, I am

Sincerely,



T. Travis Medlock  
Attorney General

TTM/an