

The State of South Carolina



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June 28, 1989

Rec 5/17/91

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

Dear Mr. ^{*Lem*} Harper:

By your letter of June 27, 1989, you have asked whether your age of 71 years would prevent you from serving the remaining three years of your elected term on the South Carolina Employment Security Commission. In addition, you have asked whether your age would prevent you from running for reelection for another term on the Employment Security Commission. It is my opinion that you may serve the remaining three years of your present term of office and further that you may offer for reelection for another term on the Employment Security Commission.

My Office has opined previously that the 1986 amendments to the federal Age Discrimination in Employment Act, particularly 29 U.S.C. § 623, would override South Carolina's statute mandating retirement at a specified age, Section 9-1-1530 of the Code of Laws of South Carolina (1976, as amended). A copy of that opinion dated January 21, 1987 is enclosed herewith; as you will see, the opinion exhaustively examines the relationship of the federal law to our state statutes to conclude that a director of the Public Service Authority would not be subject to the mandatory retirement requirements of the state law.

Subsequent to the issuance of that opinion, we examined the conclusion of the opinion in light of certain amendments made in 1988 to Section 9-1-1530 of the Code. We were of the opinion that the amendments did not remove the conflict between state and federal laws and therefore the federal law would continue to supersede state law relative to mandatory retirement based on age. Enclosed is a copy of the opinion of this Office dated October 31, 1988, so holding.

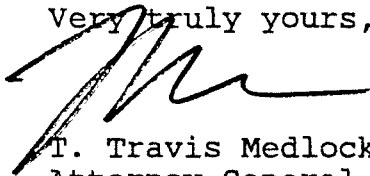
The Honorable C. Lem Harper
Page 2
June 28, 1989

In response to your request, we have researched state and federal judicial decisions and opinions of other states' attorneys general to determine whether the conclusions of the two aforementioned opinions were still viable. We found that our conclusions were consistent with interpretations of the federal law made in cases such as Morrow v. Duval County School Board, 514 So.2d 1086 (Fla. 1987) and opinions of the Attorneys General of Colorado (opinion dated June 18, 1987; file number OLS8703781/APZ), Kentucky (opinion dated February 18, 1987; KYAG OAG 87-12), and Michigan (opinion dated March 5, 1987; Opinion No. 6425). No further amendments have been made to 29 U.S.C. § 623 or to Section 9-1-1530 of the South Carolina Code. Thus, these two opinions remain the opinion of this Office.

Based on the reasoning set forth in the opinions of this Office dated January 21, 1987 and October 31, 1988 and affirmed herein, I am of the opinion that the federal amendments to the Age Discrimination in Employment Act would supersede the inconsistent portions of Section 9-1-1530 as to a mandatory retirement age. For that reason, you would be able to serve the remaining three years of your present term on the South Carolina Employment Security Commission and offer for reelection to the Commission if you so desire, your age of 71 years notwithstanding.

With warmest personal regards, I am

Very truly yours,



T. Travis Medlock
Attorney General

TTM/an

Enclosures