

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

October 26, 1989

John G. Frampton, Esquire
Dorchester County Attorney
Chellis, Mortimer & Frampton
Post Office Box 430
Summerville, South Carolina 29484

Dear Mr. Frampton:

By your letter dated October 17, 1989, to Attorney General Medlock, you request an opinion on behalf of Dorchester County Council as to whether or not an employee who was discharged from employment by the Chief Administrative Magistrate for Dorchester County is entitled to a public hearing before the entire County Council pursuant to S.C. Code Ann. §4-9-30(7) (1976 & 1988 Cum. Supp.). I agree with the conclusion you reached in the memorandum attached to your letter that such an employee is not entitled to that hearing because she was "employed in a department or agency of county government under the direction of [an] elected official or an official appointed outside county government."

Your inquiry involves, at least in part, construction of §4-9-30(7). Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E. 2d 865 (1942).

The cardinal rule of statutory construction is that a court is to ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 377 S.E.2d 569 (1989). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E. 2d 814 (1983).

John G. Frampton, Esquire
Page Two
October 26, 1989

The Home Rule Act, 1975 S.C. Acts 283, designated the powers under each alternative form of county government to include the power:

to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged by the administrator, elected official or designated department head shall be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing shall be held within fifteen days of receipt of the request. The employee shall be relieved of his duties pending the hearing and in the event a majority of the county council sustains the discharge, it shall be final subject to judicial review, but if a majority of the county council reverses the dismissal the employee shall be reinstated and paid a salary for such time as he was suspended from his employment.

Notwithstanding the above provisions of this subsection, any employee who is discharged may elect to submit his grievances concerning his discharge to a county grievance committee in those counties where such committees are operative and in such case his discharge will be reviewed in the manner provided for in the rules of that committee retaining all appellate rights therein provided for. The salary of those officials elected by the people may be increased but shall not be reduced during the terms for which they are elected, except that salary for members of council and supervisors under the council-supervisor form of government shall be set as hereinafter provided. . . .

John G. Frampton, Esquire
Page Three
October 26, 1989

This language was subsequently codified as §4-9-30(7).

In Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988), the Supreme Court of South Carolina considered the above quoted language of §4-9-30(7) where the Sheriff of Aiken County sought a declaratory judgment defining the relationship between his office and Aiken County Council. In Heath, which was decided May 23, 1988, the Court noted that §4-9-30(7) "was amended effective February 24, 1988, to clarify references relating to county grievance procedures." Id. at 418 n. 2., 368 S.E.2d at 905 n. 2.

By 1988 S.C. Acts 312, §1, effective February 24, 1988, §40-9-30(7) was amended to state:

to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established, a county employee discharged by the chief administrative officer or designated department head must be granted a public hearing before the entire county council within five days of receipt of notice of discharge. The hearing must be held within fifteen days of receipt of the request. The employee must be relieved of his duties pending the hearing and if a majority of the county council sustains the discharge, it is final subject to judicial review, but if a majority of the county council reverses the dismissal, the employee must be reinstated and paid a salary for the time he was suspended from his employment.

John G. Frampton, Esquire
Page Four
October 26, 1989

The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, except that salaries for members of council and supervisors under the council-supervisor form of government must be set as provided in this chapter. . . .

On September 14, 1988, this Office opined as to "whether [Heath, supra,] applied to Section 4-9-30(7) of the Code as it existed prior to the amendment to such provision as enacted this year or does it affect the amended provision." S.C. Att'y Gen. Op., #88-68 (Sep. 14, 1988). That Opinion states:

Based upon our review, it appears that it was the intention of the General Assembly that grievance procedures not be provided for employees discharged by an elected official as referenced in Section 4-9-30(7). As stated, the legislation specifically refers to a grievance procedure for employees discharged by a chief administrative officer or designated department head in counties which do not have a grievance procedure. To read such statute as providing a grievance procedure for employees of elected officials in counties which do have a grievance procedure but not for such employees in counties which do not have such a procedure would be discriminatory. Moreover, the "employee discharged" who is given grievance rights appears from a careful reading of the entire provision to relate to those employees "in the county departments in which the employment authority is vested in the county government."

Therefore, it is the opinion of this Office that the recent decision of the State Supreme Court in Heath v. County of Aiken, is solely applicable to Section 4-9-30(7) as it read prior to its being amended this year by the General Assembly. However, with the amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7).

Id.

John G. Frampton, Esquire
Page Five
October 26, 1989

Your letter provides that the employee involved here served as secretary to a Magistrate in Dorchester County and was terminated on October 5, 1989, by the Chief Administrative Magistrate for Dorchester County. Your attachment provides that Magistrates in Dorchester County are appointed by the Governor. You also state in your letter that Dorchester County has no grievance procedure other than those provided in §4-9-30(7). This Office must, of course, assume the facts as presented by you. See, e.g., S.C. Att'y Gen. Op. (Jun. 15, 1989) (noting this Office does not have the authority of a court or other fact-finding body in a legal opinion to adjudicate or investigate factual questions).

The same logic contained in S.C. Att'y Gen. Op. 88-68 (Sep. 14, 1988) would appear to apply to your inquiry. Because the employee at issue here was apparently employed in a department or agency under the direction of an official appointed by an authority outside county government, that employee was discharged by that official, and §4-9-30(7) as amended by 1988 S.C. Acts 312, §1, would apply here, that employee does not appear to be entitled to a grievance hearing under §4-9-30(7).

If I can answer any further questions, please advise me.

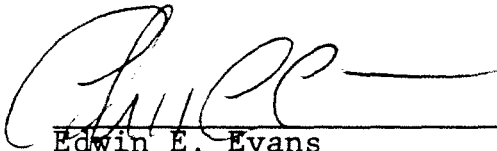
Sincerely,



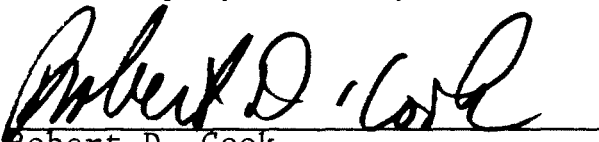
Samuel L. Wilkins
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:



Edwin E. Evans
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions