

The State of South Carolina



Office of the Attorney General

Opinion 87-87
Pg 234T. TRAVIS MEDLOCK
ATTORNEY GENERALREMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

October 26, 1987

Frances I. Cantwell, Esquire
Assistant Corporation Counsel
City of Charleston
City Hall
P. O. Box 304
Charleston, South Carolina 29402

Dear Ms. Cantwell:

Your letter dated September 28, 1987, to Attorney General Medlock was referred to me for response. By your letter, you requested an opinion as to whether members of an employee grievance committee, established pursuant to S.C. Code Ann. §§8-17-110 through -160 (1976) [County and Municipal Employees Grievance Procedure Act], for the City of Charleston, can include elected officials of the City Council. I agree with the conclusion you reached in the memorandum addressing this issue which was included with your request.

Axiomatically, the primary consideration in statutory construction is the intention of the legislature. Citizens and Southern Systems, Inc. v. S.C. Tax Comm'n, 280 S.C. 138, 311 S.E.2d 717 (1984). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. S.C. Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Ordinarily, use

Frances I. Cantwell, Esquire
Page Two
October 26, 1987

of the word "shall" in a statute means that the action referred to is mandatory. S.C. Dep't of Highways and Pub. Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). In construing a statute, the court looks to its language as a whole in light of its manifest purpose. Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984).

The County and Municipal Employees Grievance Procedure Act was enacted to implement the principle "that a uniform procedure to resolve grievances of county and municipal employees arising from their public employment will contribute to more harmonious relations between public employers and public employees and result in an improvement in public service." S.C. Code Ann. §8-17-110 (1976). According to S.C. Code Ann. §8-17-120 (1976),

[t]he governing body of any county or any incorporated municipality in this State may by ordinance or resolution adopt a plan for the hearing and resolution of employee grievances which, if adopted, shall conform substantially to the guidelines set forth in this article. [Emphasis added.]

From your letter, I understand that the City of Charleston, which has a Mayor-Council form of government established pursuant to S.C. Code Ann. §5-9-10 (1976), recently passed a resolution, authorized by the County and Municipal Employees Grievance Procedure Act, establishing a grievance procedure for City employees.

S.C. Code Ann. §8-17-130 (1976) provides, in relevant part:

The governing body of each county and incorporated municipality which elects to establish an employee grievance procedure pursuant to this article shall appoint a committee composed of not less than three nor more than nine members to serve for terms of three years.... All members of the grievance committee shall be selected on a broadly representative basis from among the career service or appointed personnel of the several county or municipal agencies, with the provision that, whenever a grievance comes before the committee initiated by or involving an employee of an agency of which a committee member also is an employee, such member shall be disqualified from participating in the hearing.

. . . . [Emphasis added.]

Frances I. Cantwell, Esquire
Page Three
October 26, 1987

The emphasized language above of §8-17-130 is clear and unambiguous. Obviously, the General Assembly intended that the membership of a county or municipal employees grievance committee be comprised of county or municipal employees. Thus, the inclusion of City Council members, elected municipal officers, among the membership of a municipal employees grievance committee would violate the mandate of §8-17-130. Accord S.C. Att'y Gen. Op., Jun. 23, 1978 (Interpreting S.C. Code Ann. §8-17-130 (1976)), this Office opined: "Therefore, unless all members of your Grievance Committee are career service or appointed personnel of Union County, the composition of the Committee will not be in compliance with state law." Cf. S.C. Code Ann. §5-7-180 (1976) ("Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.").

You suggest in your memorandum addressing this issue that "an argument can be made that the inclusion of elected officials within the committee membership does not render the committee out of compliance with the [County and Municipal Employees Grievance Procedure] Act in a substantial manner...." See S.C. Code Ann. §8-17-120 (1976).¹ Such an argument, however, does not seem to be compelling. Various provisions of the County and Municipal Employees Grievance Procedure Act contain directory language while other provisions contain mandatory language. The

¹ "Substantially" has been defined as "[e]ssentially; without material qualification; in the main; in substance; materially; in a substantial manner. About, actually, competently, and essentially. [Citation omitted.]" Black's Law Dictionary 1282 (5th ed. 1979).

"Substantially" is variously defined as meaning in a substantial manner; in substance; in the main; essentially; solidly; actually; really; truly; competently.

The term has been construed as not meaning wholly or completely, but it may mean part, or about.

. . . . [Footnotes omitted.]

Frances I. Cantwell, Esquire
Page Four
October 26, 1987

emphasized portion above of §8-17-130 contains mandatory language. See S.C. Dep't of Highways and Pub. Transp. v. Dickinson, supra. Although the County and Municipal Employees Grievance Procedure Act provides the governing body of a county or incorporated municipality with discretion concerning employee grievances, certain provisions appear to be mandatory when such a governing body elects to adopt a plan for the hearing and resolution of employee grievances. Such a governing body would appear to defeat the intent of the legislature by adopting an employee grievance plan which did not include the mandated provisions of the County and Municipal Employees Grievance Procedure Act.

Consequently, I concur with the conclusion reached in your memorandum addressing this issue. A municipal employees grievance committee, established pursuant to S.C. Code Ann. §§8-17-110 through -160 (1976), should not include elected officials of the legislative body of the city or town among its membership.

If I can answer any further questions concerning this matter, please do not hesitate to contact me.


Sincerely,

Samuel L. Wilkins

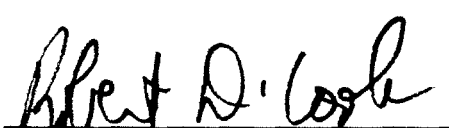
Samuel L. Wilkins
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:



Joseph A. Wilson, II
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions