The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-2072

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Dr. Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building, 1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested an opinion regarding the transfer of accumulated sick leave among the various school districts of the State in accordance with the 1984 amendment to §59-1-400, 1976 CODE OF LAWS OF SOUTH CAROLINA.

Prior to its 1984 amendment, §59-1-400 provided in part as follows:

> ... Sick leave which is accrued but not used may be accumulated up to 60 days. *** The provisions of this section shall not apply to employees of a school district which provides more liberal sick leave benefits. *** .

The 1984 amendment increased the number of days which may be accumulated from 60 to 90, and further provided that "[s]ick leave accumulated in compliance with this Act is transferable to any school district in the State by the employee with the earned leave."

The questions which you have presented are as follows:

1. If a teacher has 90 days of sick leave accumulated in a "liberal" district and transfers to a district which formerly allowed only 60 days of sick leave, may she transfer the additional 30 days of sick leave?

2. If the former school district allowed the aggregation of more than 90 days of sick leave, could

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the teacher in the above example transfer all of her sick leave, even that amount in excess of 90 days?

3. Could a school district (presumably one which permits only the minimum of 60 or 90 days) adopt a policy which would permit the transfer of more accumulated leave than the district itself allows?

School districts are bodies corporate and politic, created pursuant to general law. While they naturally control the day-to-day operations of the school systems, they are nevertheless subject to the control of the General Assembly acting through general laws. See, e.g., Moseley v. Welch, 209 S.C. 19, 34, 39 S.E.2d 133 (1946). Thus, it is clear that insofar as the General Assembly has addressed a particular area by a general law, that law is controlling in that area.

The plain meaning of §59-1-400 as amended, authorizes the transfer of up to 90 days of sick leave by any teacher who transfers employment after the effective date of the 1984 amendment. By permitting the 'accumulation' of leave up to 90 days, the Act clearly permits a teacher who transfers between districts after the Act's effective date (June 28, 1984) to aggregate leave up to 90 days, and there is no indication in the Act that this should vary according to where the leave was originally earned or what the prior policy of the teacher's present employer might have been. The Act simply provides that after its effective date, any teacher may carry up to 90 days of leave. That policy is served by permitting any teacher who has previously earned up to 90 days leave to keep it.

On the other hand, neither the amendments to §59-1-400 nor any other provision of law would authorize the transfer of more than the number of days of leave now permitted by a receiving district. Since the school districts are independent political subdivisions, a contract between one district and a teacher clearly cannot bind another district in any way. Nor could any teacher validly have an expectation that another district would be willing to permit the transfer of excess days over its own policy; if such were the case, a teacher could just as well expect the receiving district to pay past due salary owed by the receiving district, or assume liability for other past due prior salary and fringe benefit obligations of the previous employer.

Finally, and in answer to your third question, serious problems of fairness would be created if the receiving district were to credit a transferring teacher with more days of sick leave than the district allows for its own employees. While some justification (such as possible recruiting advantages) could be imagined for such a policy, it would appear to fall afoul of the Equal Protection Clause's requirement that similarly situated individuals be treated similarly. For this reason, this office would advise against the adoption of such a policy.

In summary, it is the opinion of this office that:

1. Beginning with the effective date of the 1984 amendment to §59-1-400 (June 28, 1984), any teacher who has accumulated up to 90 days sick leave in employment with one school district may transfer it to another district, regardless of the prior policy of the receiving district.

2. If the receiving district permits only the transfer of the current minimum of 90 days or of some greater minimum amount which is less than the number of days the teacher wishes to transfer, the receiving district may limit the teacher's transfer to the district's current minimum.

3. The probability of violating constitutional equal protection guarantees suggests that it would be inadvisable for a district to permit incoming teachers to transfer more days of sick leave than that district allows its own teachers to accumulate.

Sincerely yours,

Robert D. Cook
Executive Assistant for Opinions

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