

The State of South Carolina



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April 8, 1986

C. Lem Harper, Chairman
South Carolina Employment
Security Commission
P. O. Box 995
Columbia, South Carolina 29202

Dear Mr. Harper:

You have asked our advice as to the requirements under state law for mandatory retirement of a member of the Employment Security Commission.

Section 9-1-1530 of the Code of Laws of South Carolina (1976 as amended) provides as follows:

Any employee or teacher in service who has attained the age of seventy years shall be retired forthwith, except that:

- (1) With the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years;
- (2) With the approval of his employer and the Board ["State Budget and Control Board which shall act under the provisions of this chapter through its division of personnel administration;"] he may, upon his request therefor, be continued in service for a period of one year following each such request until such employee has reached the age of seventy-two years; and

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- (3) With the approval of his employer, upon his request therefor, be continued in service for such period of time as may be necessary for such employee to qualify for coverage under the old age and survivors insurance provision of Title II of the Federal Social Security Act, as amended.

It shall be mandatory for any employee or teacher whether or not appointed and regardless of whether or not a member of the South Carolina Retirement System to retire no later than the end of the fiscal year in which he reaches his seventy-second birthday.

This section shall not apply to any person holding an elective office.

This section shall take effect July 1, 1969. Provided, however, no person affected by the provisions of this section shall be required to retire prior to July 1, 1971.

Provided, however, that excepting constitutional offices, this section shall not apply to appointive offices receiving per diem or travel allowances as total compensation or to employees of the State Court System when such court employees are employed on a part-time basis.

The term "employee" is defined by Section 9-1-10(4) of the Code. A member of the Employment Security Commission would be included within subpart (a) of this Section which provides as follows:

"Employee," shall mean (a) to the extent he is compensated by the State, any employee, agent or officer of the State or any of its departments, bureaus and institutions, other than the public schools, whether such employee is elected, appointed or employed.

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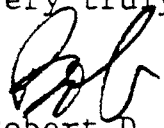
The term "employer" is defined by § 9-1-10 (5) as follows:

"Employer" shall mean the State, a county board of education, a district board of trustees, a city board of education, the board of trustees or other managing board of any State-supported college or educational institution or any agency of the State by which a teacher or employee is paid; the term "employer" shall also include any county, municipality or other political subdivision of the State, or any agency or department thereof, which shall have been admitted to the system under the provisions of § 9-1-470 or any service organization referred to in paragraph (4) of this section;

Applying these provisions to the referenced situation, a member of the Employment Security Commission would be covered by the mandatory retirement provision. See, Op. Atty. Gen., April 13, 1970. The one possible exception to the mandatory retirement requirement would be inapplicable to a member of the Commission because, pursuant to § 41-29-10 a commissioner receives "an annual salary payable in monthly installments." Of course, however, pursuant to § 9-1-1530, an employee may be continued in service until the age of seventy-two upon approval of his employer and the Board. This provision, authorizing service until the age of seventy-two would clearly be applicable to a member of the Employment Security Commission.

If I can be of further assistance, please let me know.
With kindest regards, I remain

Very truly yours,


Robert D. Cook
Executive Assistant for Opinions

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