

The State of South Carolina



Office of the Attorney General

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February 23, 1987

Phyllis M. Mayes
Director, Division of Human Resource Management
Post Office Box 12547
Columbia, South Carolina 29211

Re: Salary of the Executive Director of the Patients'
Compensation Fund

Dear Phyllis:

Your letter dated January 23, 1987, to Attorney General Medlock has been referred to me for response. In light of the 1986-87 appropriations act, 1986 S.C. Acts 540, you have inquired about the current salary of the Executive Director of the Patients' Compensation Fund, whose position was created and who was hired effective July 1, 1986, at an annual salary of \$45,000 which is the line item amount appropriated for fiscal year 1986-87. Specifically, you have asked these two questions:

- (1) Can the incumbent maintain his salary of \$45,000?
- (2) If it is necessary to reduce the salary of the incumbent, is the maximum amount of the assigned pay range correct or would the midpoint of that range be correct?

The 1986-87 appropriations act funded a new agency to administer the Patients' Compensation Fund and created the position of Director for that agency with a line-item appropriation of \$45,000 for compensation. 1986 S.C. Acts 540 §79A.

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Section 16 of the 1986-87 appropriations act contains the following proviso:

Provided, Further, That notwithstanding any other provision of law that, in the event of an agency head vacancy, the governing board of the agency, upon approval of the Budget and Control Board, may set the salary for the agency head at a rate not to exceed the mid-point of the range established by the Executive Salary and Performance Evaluation Commission. Provided, Further, That the funding for such purpose should come from resources within the agency.

1986 S.C. Acts 540 §16.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. See, e.g., Garris v. Cincinnati Ins. Co., 280 S.C. 149, 311 S.E.2d 723 (1984); Citizens and Southern Systems, Inc. v. South Carolina Tax Comm'n, 280 S.C. 138, 311 S.E.2d 717 (1984); Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

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. Companies, 280 S.C. 69, 310 S.E.2d 814 (1983). 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).

Your inquiries must be considered in light of these general rules of statutory construction. From your letter, I also understand that the salary range for the Executive Director of the Patients' Compensation Fund was not established until October 1, 1986, after the Executive Director was hired, and that the midpoint of the salary range is less than the current salary and line-item appropriation for the Executive Director.

The issue is whether the proviso, quoted above, in the 1986-87 appropriations act concerning the filling of agency heads' vacancies applies here. Assuming, without the necessity

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of deciding here, that the filling of a new position is equivalent to the filling of a "vacancy," this proviso would not, in my opinion, prohibit the current Executive Director from maintaining his salary of \$45,000 because, at the time the current Executive Director was hired, no salary range existed to establish the limits set by the proviso and, at the time the salary range was established setting a midpoint, the position of Executive Director was filled.

In your letter, you reference my earlier letter dated August 8, 1986, to R. Kenneth Harrill of your office in which I advised that the same proviso involved here would control over a line-item appropriation as to the maximum amount of the salary paid to a newly-hired agency head who fills an agency head vacancy. See Atty. Gen. Op., August 8, 1986. Your current inquiry is distinguishable because my analysis in my letter of August 8, 1986, assumed the existence of a salary range established by the Executive Salary and Performance Evaluation Committee at the time the vacancy was being filled.

CONCLUSION

In my opinion, the proviso, quoted herein, of section 16 of the 1986-87 appropriations act would not prohibit the current Executive Director of the Patients' Compensation Fund from maintaining his salary of \$45,000. A response to your second question is, therefore, unnecessary. If I can answer any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Sam Wilkins

Samuel L. Wilkins
Assistant Attorney General

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