

1981 WL 158134 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1981

*1 Dr. Salvatore A. Fede
Superintendent
Will Lou Gray Opportunity School
West Campus Road
West Columbia, South Carolina 29169

Dear Dr. Fede:

You have requested the opinion of this Office as to whether teachers at the Opportunity School come within the terms of Act 190, Acts and Joint Resolutions of South Carolina, 1975 now codified as [§ 8-11-210, et seq. Code of Laws of South Carolina \(1976\)](#). This law provides for a comprehensive system of state personnel administration including a classification and compensation plan. [§ 8-11-210](#).

Teaching employees of the Opportunity School should be subject to the terms of [§ 8-11-210, et seq.](#) The law applies to all state agencies, departments, institutions, boards, etc. and the Opportunity School should fall within the scope of one or more of those categories. [§§ 8-11-210 and 8-11-220](#). Although some state personnel are exempted, none of these exceptions apply to teachers at the Opportunity School. [§§ 8-11-260 and 8-11-270](#). The exemption for academic personnel at institutions of higher learning ([§§ 8-11-220 and 8-11-270](#)) is not available because the Opportunity School is not primarily engaged in the post-secondary education which characterizes such institutions. See [§§ 59-51-10 and 59-103-5, as amended](#). In addition, I have contacted Legislative Information Systems which has informed me that no bills have been filed in the General Assembly which would provide exemptions from [§ 8-11-210 et seq.](#) for Opportunity School teachers. But see infra.

The above conclusions about the applicability of [§ 8-11-210, et seq.](#) are supported by a provision in the 1980 Appropriations Act (Act 517 § 168, p. 2181) which mandates that all salaries paid by departments and institutions be in accord with a uniform classification and compensation plan. See also Act 517, § 14, p. 1635, paragraph A. Presumably, the plan is the same as that contemplated under [§ 8-11-230](#). The school should come under the plan because the proviso's reference to departments and institutions indicates that it includes all of those bodies, such as the Opportunity School, which are funded in separate sections of the Appropriations Act.

The only potential exemption from the classification and compensation plan for the Opportunity School teachers is one for any '... other individual or group of positions that cannot practically be covered by the plan'. Act 517 § 14. Because the Budget and Control Board approves the classification and compensation plan and approves the salaries for those positions exempted, the inference may be made that it also approves the exemptions. Thus, if the Opportunity School believes that its teachers cannot 'practically be covered' by the plan, it could suggest to the Budget and Control Board that the positions be excluded; however, even if the Board approves the exemptions, the Opportunity School would not be excused from any applicable requirements of [§ 8-11-210, et seq.](#) other than those for the plan.

*2 The opinion of this Office is that [§ 8-11-210, et seq.](#) of the Code applies to teachers at the Opportunity School. If we may be of further assistance, please let us know.

Very truly yours,

J. Emory Smith, Jr.

Assistant Attorney General

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