1982 WL 189146 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 21, 1982

***1** Rudy Brown
Research Assistant
Joint Legislative Committee on State Employees
Post Office Box 142
Columbia, South Carolina 29202

Dear Mr. Brown:
This is in response to your letter of January 11, 1982. In that letter you stated that the members of the committee have asked the following question:
Can the legislature limit the amount of time allowed for each side to present arguments during hearings before the State Employee Grievance Committee?

Certainly the legislature is free to limit the duration of closing arguments before the State Employee Grievance Committee. Due process does not invariably require that parties in hearings before an administrative agency be afforded the right to present oral argument when the agency is functioning as a quasi-judicial body. 2 K. Davis, Administrative Law Treatise, § 10.9 (2d ed. 1979); United States v. Florida East Coast Railway Co., 410 U.S. 224, 245, 93 S.Ct. 810. 35 L.Ed.2d 223 (1973). And in those specific instances where due process does require that a party before an administrative tribunal be afforded the opportunity to make oral argument, the constitutional requirement is satisfied if the party is accorded the right to make a brief argument in support of his case. Landoner v. Denver, 210 U.S. 373, 386, 28 S.Ct. 708, 52 L.Ed. 1103 (1908).

As I understand the question, however, the members of your committee want to know not simply whether the General Assembly can limit the length of arguments before the committee but whether the General Assembly can limit the time for presentation of cases by grievants and agencies in hearings before the State Employees Grievance Committee. The answer to this question is a qualified yes.

Under the State Employee Grievance Procedure Act (Section 8-17-10 et seq., South Carolina Code, as amended), the State Employee Grievance Committee functions as a quasijudicial or adjudicatory body. See § 8-17-30, South Carolina Code (Cum.Supp. 1980); and compare City of Spartanburg v. Paris, 251 S.C. 187, 161 S.E.2d 228 (1968). And,
[u]nder general requirements applicable to quasijudicial proceedings, or under the requirement of a full hearing, a party has the right, and the hearing must afford him the opportunity, to defend the right involved, usually by argument, proof, and cross-examination of witnesses . . ..

2 Am.Jur.2d Administrative Law, § 416 at 227 (1962). Consistent with these 'general requirements' the South Carolina Supreme Court has held that in hearings of the nature of those conducted before the State Employee Grievance Committee, 'the substantial rights of the parties must be preserved.' City of Spartanburg v. Paris, supra, 251 S.C. 187, 190, 161 S.E.2d 228 (involving hearing before civil service commission on propriety of municipal employee's termination). Additionally, the Court has said that due process requires that, before making a decision on any question before it, an administrative agency or board acting in a quasi-judicial capacity must consider all relevant evidence pertaining to that question. Pettiford v. South Carolina State Board of Education, 218 S.C. 322, 62 S.E.2d 780, 791 (1975), cert. den. 341 U.S. 920. Compliance with this mandate would seem necessarily to require that the parties be afforded an adequate opportunity to adduce such evidence. See Appalachian Power

Co. v. Environmental Protection Agency, 277 F.2d 495, 503 (4th Cir. 1973) (where hearing required, parties must be given opportunity to submit effective presentation of their respective cases).

***2** Adherence to the foregoing requirements, however, does not demand that the parties be allowed to dictate the pace or duration of any hearing before the State Employee Grievance Committee. Indeed, it has been held that '[a]dministrative agencies must and do have the discretion to reasonably regulate the length of time afforded parties to present their evidence.' Commercial Bank of West Liberty v. Hall, 500 S.W.2d 77, 79 (Ky. 1973). See also Wodley v. American Window Glass Company, 341 P.2d 564, 567 (Ok. 1959) ('The decision as to when [an administrative] hearing is to be closed is not absolutely controlled by the parties. . . . [A] hearing can be closed over the protest of the parties, and despite their desires to take additional testimony.')

If an agency may reasonably regulate the length of time afforded to parties to present their respective cases, there appears to be no logical reason why the General Assembly could not do likewise through legislation. Fixing a limitation that would be reasonable in all circumstances, regardless of the relative complexity of the facts surrounding the grievance, does, however, pose a practical problem. Therefore, this office would suggest that any legislative limitation be expressed in substantially these words:
Ordinarily, hearings before the State Employee Grievance Committee shall be limited in duration to not more than one working day; provided, however, that the Committee may, upon a majority vote of the members present, grant a request from either party for such additional time for presentation of its case as the Committee deems appropriate.

The proviso is a necessary 'safety value' to cover those complicated cases in which the one day limit would not be sufficient for both parties to submit an effective presentation of their cases. The allotment of a specific number of hours to each side which would be reasonable for all cases is an impossible legislative task. Accordingly, that function is left to the Committee which will have at least a passing acquaintance with the nature of the particular case prior to the hearing as a result of having received copies of the 'pertinent records and papers' from the Director of State Personnel. See § 8-17-40 South Carolina Code (Cum.Supp. 1980).

I hope that I have adequately addressed your inquiry. If you have any further questions, please let me know.
Sincerely,

Vance J. Bettis
Assistant Attorney General

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