

1981 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-24, 1981 WL 96550

Office of the Attorney General

State of South Carolina

Opinion No. 81-24

March 19, 1981

***1 SUBJECT: Employees, Public—Salaries—Federal Funding—Reductions in Force**

(1) Reduction in force (RIF) policies are applicable to all permanent state employees, without regard to sources of funding for their salaries.

(2) Permanent employees are entitled to equal consideration in application of RIF policies, even though they have executed a statement of understanding (Federal Position Agreement) that continued employment in the position in which they were employed is dependent upon continued federal funding.

(3) State employees in federally-funded positions enjoy the same rights as all other permanent employees under the State Employees Grievance Procedure Act (Section 8–17–10, et seq., Code of Laws, 1976, as amended).

To: Executive Director
State Budget and Control Board

DISCUSSION:

You have referred to this Office several questions that have been raised concerning reduction-in-force (RIF) policies and procedures particularly as they apply to employees in federally-funded positions. Since August 1979, persons who were to be employed in positions that were federally-funded (in whole or in part) have been required to sign a 'Federal Position Agreement'. This agreement is in effect a statement of understanding signed by the employee that his continued employment in such position is subject to: (1) satisfactory job performance, and (2) continued federal funding.

The questions raised are considered in the order presented by your letter.

QUESTION:

1. Should these employees be affected by a reduction in force which results from a lack of State-appropriated funds?

OPINION:

Yes. In contemplation of both state and federal laws and regulations these employees are state employees. They have the same rights, benefits and obligations as other state employees. See e.g., second proviso to Section 166, of Act 517 of 1980, the General Appropriations Act, and the identical provision in prior appropriations acts. Section 168 of the 1980 Appropriations Act further provides that the State employee classification and compensation plan '... shall include all employees regardless of the sources of funds from which payment for personal service is drawn.' (Emphasis added) Federal grant regulations uniformly require that employees under grants have the same rights and obligations as other state employees. See e.g., [45 Fed.Reg. Section 676.43](#) (1980) as to CETA funded employees.

In an opinion of this Office issued September 11, 1980, it was concluded that federally-funded CETA employees were not to be retained while state-funded employees who performed substantially the same jobs in the same agency were being laid off, although federal funds were available to pay such CETA employees. [Patrick v. Marshall, 460 F.Supp. 23 \(N.D.Cal., 1978\)](#) and [45 Fed.Reg. Section 676.73\(d\) \(1980\)](#). If all employees are to be treated similarly without regard to the source of funds for their salaries, then the same requirements or standards for layoffs should apply to all employees, i.e. retention points should be calculated based on seniority and performance, and the order of layoff should be determined by the number of retention points created to each employee. See Article XIII, Section 5 of the State Merit System Rules and Section 7.09E of the State Employee Personnel Rules Manual. It is noteworthy that neither of these rules concerning retention and RIF policies makes any distinction between employees based upon the funding sources of the employees' salaries.

QUESTION:

*2 2. Does the signing of these [Federal Position Agreement] statements preclude the employees from insisting upon rights normally afforded under reduction in force [RIF] policies when their jobs are terminated as a result of a reduction in Federal funds?

OPINION:

No. If the employee is a permanent employee, that is he has been employed for more than six (6) months and has performed satisfactorily (Section 0.01, State Personnel Manual), he is entitled to all rights afforded other employees without regard to source of funding for his salary, as above stated. The reduction in force (RIF) policy of the agency must apply equally to all employees.

The Federal Position Agreement is a 'statement of understanding' by the employee. It is not a contract. As indicated by opinion of this Office issued June 14, 1979, the 'agreement' would not affect the vested right of employees who were employed prior to July 1, 1979. As to persons employed after that date who signed the agreement, its effect was to place them on notice that their continued employment in that particular position would be subject to continued federal funding of the position; but it did not, and could not operate to deprive them of their rights vis-a-vis other permanent employees on such matters as execution of a RIF plan. While positions may be and often are terminated for lack of funds, employees may not be terminated except as the agency's RIF plan provides as to all employees in the classes affected by the RIF.

QUESTION:

3. Do these employees have grievance rights upon termination as a result of a reduction in force [RIF] policy?

OPINION:

Yes. As permanent employees their rights are the same as all other permanent employees under the State Employee Grievance Procedure Act of 1974, as amended. (Section 8-17-10, et seq., Code of Laws, 1976). Grievances include those arising from layoffs. (Code Section 8-17-20, as amended).

Frank K. Sloan

Deputy Attorney General

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