

1981 WL 158230 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 9, 1981

\*1 Dr. A. Baron Holmes, IV  
President  
South Carolina School for the Deaf and Blind  
Spartanburg, South Carolina 29302

Dear Baron:

You have requested the opinion of this office as to whether the School for the Deaf and Blind may extend teachers' contracts and pay for the extra days at one-half of the normal rate in lieu of allowing the teachers to use annual leave on regular teaching days. This policy would apply only to teachers who had accumulated the maximum days of leave allowable and who would lose the extra days accumulated.

Annual leave is provided for employees at all state agencies, departments and institutions under [§ 8-11-610, et seq. of the Code of Laws of South Carolina \(1976\)](#). Teaching personnel and officials of academic rank at state supported institutions of higher learning are excluded, but this exemption would not apply to teachers and other personnel at your school because it is not an institution of higher learning. Thus, they would be included within the scope of the annual leave laws.

Allowing the teachers to use their annual leave appears to be mandatory. [Section 8-11-610](#) states that '[a]ny permanent full-time state employee shall be entitled to annual leave with pay . . . [emphasis added]'. 'Ordinarily, the use of the word 'shall' in a statute carries with it the presumption that it is used in the imperative rather than in the directory sense'. [Sutherland Statutory Construction](#), Vol. 2A, § 57.03, p. 416. A mandatory interpretation of the word 'shall' in [§ 8-11-610](#) is consistent with other parts of the annual leave laws. That unused leave may be accumulated up to forty-five (45) days ([§ 8-11-610](#)) and that, upon termination, employees may be compensated for any remaining unused leave ([§ 8-11-620, as amended](#)), supports their entitlement to receive all the leave which they are due.

Although employees are given a certain amount of discretion to schedule leave ([see § 8-11-610 and Rule 97-7\(B\)](#)), this discretion does not extend to denying employees the use of annual leave until they have accumulated the maximum amount and then extending their contracts to cover any excess that they would otherwise lose. To implement such a procedure, would, in effect, deny the use of leave to employees for several years. Thus, it would be inconsistent with the assurance in [§ 8-11-610](#) that employees are entitled to annual leave.

Even if the proposed policy could be implemented so that leave would be 'used' at the end of the regular teaching days, paying for that leave at one-half the normal rate would not be permissible. Employees are entitled to leave with 'pay' which is interpreted administratively to mean leave at full salary. [See Faile v. South Carolina Employment Security Commission, 267, S.C. 536, 230 S.E.2d 219 \(1976\)](#). Nothing in the annual leave laws indicates that a different rate of compensation may be applied.

Finally, characterizing the work performed by your school's teachers on days when they might have taken leave as overtime and paying them for it at one-half the normal rate would not be permissible. The manual of the State Division of Personnel defines overtime as being ' . . . hours worked in excess of 160 hours in a given 28 days work period . . . ' [§ 3.04\(a\)\(1\)](#). The extra days included in your proposed contracts would not come within that definition. In addition, teachers at your school come within the category of employees who are exempt from overtime if their minimum salary exceeds \$8,840.00. [See § 3.04\(c\)\(3\)\(a\)\(1\) and \(2\)](#). As such, overtime for them could not be paid except upon prior approval of the Budget and Control Board. Although the rate of overtime compensation for otherwise exempt employees who receive approval for it from the Budget and Control

Board is not expressly stated, the rate for non-exempt employees at 'time and a half' greatly exceeds the half the normal rate proposed for your teachers. Moreover, even if overtime pay were allowable here, it is not identical with annual leave, and thus, could not be used as a substitute for it.

\*2 In conclusion, the opinion of this office is that you may not extend the contracts of teachers at your school to provide them with leave that they would otherwise lose. Even if you could do so, the compensation would have to be at the normal salary rate. If we may be of further assistance, please let us know.

Very truly yours,

J. Emory Smith, Jr.  
Assistant Attorney General

1981 WL 158230 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.