

1982 WL 189249 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1982

*1 Joseph A. Mack
Deputy Director
State Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Mack:

This is in response to your April 1 request for this office's opinion concerning whether Act Number 168 of 1981 gives the Department of Corrections authority to exempt its teaching personnel from the State Classification and Compensation Plan.

Act Number 168 of 1981 (62 Statutes 787), effective July 23, 1981, created Palmetto Unified School District No. 1 as a statewide unified school district within the Department of Corrections. The act places the school district under the control and management of a board of nine trustees who operate the school district under the supervision of the State Board of Corrections. Section 7 of the act provides, in pertinent part:

With the consent and concurrence of the State Board of Corrections, the board of the school district shall operate as executory agent for the schools under its jurisdiction and shall perform administrative functions as follows:

(7) Establish a twelve-month school program and teachers' pay schedule based on the state and average school supplement pay scales;

Section 9 of Act 168 provides:

The superintendent of the district and all other educational personnel shall be employed, supervised and terminated according to the South Carolina Department of Corrections' personnel policies and procedures.

Since the act directs the board of Palmetto Unified School District No. 1 to '[e]stablish a teacher's pay schedule based on the state and average school supplement pay scales [.]' it is reasonably clear that the General Assembly intended to exempt from the uniform Classification and Compensation Plan teaching positions within the Department of Corrections.¹ The 1981-82 Appropriations Act (Act No. 178 of 1981, 62 Stat. 933), which took effect six days after Act Number 168, however, contains the following proviso in Part I, Section 133:

[A]ll salaries paid by departments and institutions shall be in accord with a uniform classification and compensation plan, approved by the Budget and Control Board, applicable to all personnel of the State Government whose compensation is not specifically fixed in this act. Such plan shall include all employees regardless of the source of funds from which payment for personal service is drawn. Provided, However, That academic personnel of the institutions of higher learning

and other individual or group of positions that cannot practically be covered by the plan may be excluded therefrom but their compensations shall, nevertheless, be subject to approval by the Budget and Control Board.

The question arises as to the effect of this proviso on the implicit exemption from the Classification and Compensation Plan conferred on teaching positions within the Department of Corrections.

Teaching positions within the Department of Corrections do not fall within any of the exceptions to this proviso. The salaries of the Department's teachers are not specifically fixed in the Appropriations Act; the Department's teachers are not 'academic personnel of [an] institution of the higher learning; and the teaching positions at the Department are not such that they 'cannot practically be covered by the [uniform Classification and Compensation] [P]lan' in view of the fact that those positions historically have been covered by that plan. Therefore, it might be argued that the Appropriations Act, through this proviso and the general suspension clause (1981 Acts and Joint Resolutions at p. 1655²), suspends for fiscal year 1981-1982 the exemption from the plan conferred by Section 7(7) of Act Number 168. A cardinal rule of statutory construction, however, is that 'statutes adopted at the same session of the Legislature are to be construed together, with the purpose of harmonizing them, and if they are necessarily inconsistent, the statute dealing with common subject-matter in a minute and particular way will prevail over one of a more general nature.' [South Carolina Tax Commission v. Brown](#), 154 S.C. 55, 61-62, 151 S.E. 218 (1930); accord, [Smith, et al. v. South Carolina State Highway Commission](#), 138 S.C. 374, 378, 136 S.E. 487 (1927). See also 1A [Sutherland's Statutory Construction](#), §§ 23.15 and 23.17 (C. Sands ed. 1972); 82 C.J.S. [Statutes](#), § 297 at 509 (1953). Since Act Number 168 pertains only to teaching positions within the Department of Corrections whereas the proviso to the Appropriations Act pertains generally to all state employees, it is the opinion of this office that Section 8(7) of Act Number 168 would prevail over the proviso to the extent of any necessary inconsistency between the two.

*2 In conclusion, it is the opinion of this office that teaching personnel within the Department of Corrections are exempt from the uniform Classification and Compensation Plan by virtue of Section 7(7) of Act Number 168 of 1981. The power to set salaries conferred on the board of Palmetto Unified School District No. 1 by Section 7(7) is necessarily inconsistent with the general right of the State Personnel Division to prescribe salaries of state employees in accordance with a uniform Classification and Compensation Plan. Nevertheless, it is the opinion of this office that the salaries for teaching personnel prescribed by the school board for Palmetto Unified School District No. 1, like all salaries for unclassified positions not fixed by statute, must be approved by the Budget and Control Board.

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

1 [Section 8-11-270, Code of Laws of South Carolina](#), 1976, states:

The classification and compensation plan shall not apply to:

4. Such other positions the General Assembly may elect to exempt from time to time.

2 The general suspension clause to the 1981-82 Appropriations Act provides: 'All Acts or parts of Acts inconsistent with any of the provisions of Part I of this Act are hereby suspended for the fiscal year 1981-82.' 1981 Acts and Joint Resolutions at p. 155.

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