

1981 WL 158023 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 23, 1981

**\*1 RE: Opinion request of September 15, 1981**

Honorable W. Paul Cantrell, Jr.  
State Senator  
Gressette Senate Office Building  
Columbia, South Carolina 29202

Dear Senator Cantrell:

Mrs. Hamilton, to whom the above-referenced opinion request was first routed, has decided not to return to work with this Office at this time and, consequently, I have been asked by the Attorney General to respond to you. You have asked the opinion of this Office concerning four specific questions in the general framework of the proviso of the Appropriations Act recently passed by the General Assembly that employees laid-off or facing lay-off because of a reduction-in-force shall be given priority consideration for any position provided for in the Act. I shall deal with each of your questions seriatim.

Initially, it must be understood that the 'priority consideration' aspect of the proviso is directed primarily to classified positions and, as interpreted by the State Personnel Division, means that a worker laid off should be given a first look by an employing agency when the employing agency has an opening in the class of the laid-off worker. Faculty appointments are impliedly not part of the February 12, 1981, State Personnel Division procedures for filling vacancies with employees affected by reduction-in-force because of the overlapping involvement of tenure/non-tenured considerations as well as the fact that these positions are not classified. Moreover, the priority consideration means simply that the laid-off employee should be looked at first (to the extent of reviewing an application or resume) before any other action is taken to fill the position.

Your first question was: '1. Is a laid-off tenured faculty member and academic administrator at one of the Consortium member institutions, with full qualifications and solid employment record, entitled to such priority consideration for employment as Executive Director of the Consortium?' It is the opinion of this Office that if this person were a state employee in his previous position and that previous position were deemed similar (i.e., the same 'class' of position) by the Board of Directors of the Consortium, then such person would be entitled to priority consideration for the position.

Answering your second question, priority consideration means only that the entitled person or persons should be considered before proceeding to general recruitment for the position and it is the opinion of this Office that there is no necessity to interview any or all entitled persons in order to discharge the requirement of priority consideration.

Answering your third question, it is the opinion of this Office that priority consideration does not mean that if the entitled person is considered and rejected that any disqualifying reason must be given to the entitled person or anyone else.

Answering your fourth question, it is the opinion of this Office that a transfer of a laid-off tenured faculty member to the position of Executive Director of the Consortium would probably not violate the State of South Carolina's general commitment to affirmative action if the employee involved had originally been appointed in a way that did no violence to that commitment. In addition, most affirmative action plans are filed on an agency basis and there are no facts in your letter from which this Office could deduce whether the Consortium has an affirmative action plan in place. On balance, it is the opinion of this Office that a violation of the State's commitment to affirmative action would probably not arise from giving priority consideration and even employment to a previous state employee who had suffered termination because of a reduction-in-force. This opinion assumes

of course that there does not exist another terminated employee also entitled to priority consideration who would fulfill an affirmative action goal by receiving the position and who would be entitled to consideration equal to or superior to the person to whom your first question refers.

\*2 If I may be of any further help to you on this matter please contact me at your convenience.

Sincerely yours,

William P. Simpson  
Assistant Attorney General

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