

1982 WL 189393 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 5, 1982

*1 Jack S. Mullins, Ph.D.

Director

State Personnel Division

S.C. Budget and Control Board

1205 Pendleton Street

Columbia, South Carolina 29201

Dear Dr. Mullins:

This is in response to your letter of July 12, 1982. As you note, the State Employee Grievance Procedure Act of 1982 (H.2626), requires all state agencies to submit internal employee grievance plans to the State Personnel Director within ninety (90) days of the effective date of the act for his approval. You have inquired concerning how certain discrepancies between provisions of the 1982 act and provisions of internal agency grievance plans adopted and approved pursuant to the State Employee Grievance Procedure Act of 1974, as amended (§ 8-17-10 et seq.; S.C. Code), should be resolved during the interim between the effective date of the new act and submission and approval of new agency grievance plans. Specifically, you have addressed the following questions to this office:

1. Does a grievant have a right to a representative, including counsel, if the present agency plan prohibits representatives?
2. Should an agency follow the time period for an employee initiating an appeal as presently outlined in the agency plan or adopt immediately the twenty-one calendar day time period provided for in the new act?
3. Can internal time periods of the agency grievance plan be waived by mutual written agreement of both parties if the present agency plan prohibits the waiving of time periods?
4. Should agencies limit grievable issues to those contained in the new act or continue to allow the appeal of those issues outlined in the present agency plan?

It is the opinion of this office that, where provisions of the new act conflict with provisions of internal agency plans adopted under the old act, the provisions of the 1982 act are controlling. See 3 Am.Jur.2d Administrative Law, § 300 at 127 (1962) ('[A] regulation, valid when promulgated, becomes invalid upon the enactment of a statute in conflict with the regulation.') Thus, in answer to your specific questions, it is our opinion that:

1. Grievants have a right to a representative at the various steps of internal grievance procedure notwithstanding that such is prohibited by the agency's current grievance plan because the 1982 act specifically provides that 'the grievant shall have the right to a representative, including counsel' at the intra-agency stages of his grievance. H.2626 § 3.
2. Grievants may initiate grievance proceedings within an agency within twenty-one (21) days of the effective date of the challenged agency action notwithstanding that the existing agency grievance plan may provide a shorter time period within which grievance proceedings must be initiated. Id.
3. Internal time periods of the agency grievance plan may be waived by mutual written agreement of the parties even though the present agency plan prohibits such a waiver. In accordance with the terms of the 1982 act, however, the forty-five calendar day

period within which the agency is required to take final action on the grievance may be waived by mutual written agreement only if a court action between the parties is pending. Id.

*2 4. As to what issues are grievable within the agency, the current agency plan is controlling provided that it is at least as inclusive as is the new statute and does not make grievable issues that are specifically declared to be non-grievable under the new act (i.e., promotions where the requisite nonfrivolous allegations are not made). Moreover, those issues that the new act makes grievable only under prescribed conditions or within certain limitations (i.e., compensation and reductions in force) may not be grieved within the agency if the requisite conditions are not present or the limitations are not observed.

If you have further questions concerning this matter, please let me know.

Sincerely,

Vance J. Bettis
Assistant Attorney General

1982 WL 189393 (S.C.A.G.)

End of Document

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