

1980 WL 121247 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1980

***1 Re: The State Employee Grievance Procedures Act**

Dr. Jack S. Mullins
Director
State Budget and Control Board
Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have recently addressed several questions to this Office concerning the status of employment related grievance appeals after the enactment of the amendment which would exempt academic personnel of the State colleges and universities from the State Employee Grievance Procedures Act. It is the opinion of this Office that if the exemption is passed without a saving clause, academic personnel would be barred both from presenting any grievance appeals at any step in the grievance procedure and from continuing to pursue any appeal which had been instituted prior to the enactment of the amendment. Moreover, academic personnel could appeal adverse actions taken prior to the enactment of the amendment in an administrative forum if a grievance appeal is filed timely and if it concerns matters covered by the agency's current grievance appeals procedures.

The foregoing opinions rest upon longstanding tenets of law. The General Assembly has not enacted a general saving clause and the State Constitution does not contain a general saving clause. Saving clauses generally provide that all pending actions founded upon a statute will not be affected by an amendment or a repeal of that statute. In the absence of a general saving clause or a specific saving clause in the amendment, once the exemption is enacted the right to proceed further under the law that existed prior to the amendment is terminated. See, [De La Rama Steamship Co. v. United States](#), 344 U.S. 386, 390 (1953). One legal authority states, concerning an analogous jurisdictional matter

A court that has jurisdiction of a case may lose it by a statute subsequently abolishing the jurisdiction of the court in a case of the kind involved where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment. Such a construction has sometimes been given where the statute contains no savings clause excluding its operation with regard to suits pending at the time of its enactment. 20 Am.Jur.2d, [Courts](#), § 150.

The same legal authority states that a

... statute in its old form is superseded by the statute in its amended form, the amended section of the statute taking the place of the original section for all intents and purposes as if the amendment had always been there. Unless a contrary intent is clearly indicated, the amended statute is regarded as if the original statute had been repealed, and the whole statute re-enacted with the amendment. 73 Am.Jur.2d, [Statutes](#), § 343.

The South Carolina Supreme Court expressed its opinion about the status of statutory amendments in [Windham v. Pace](#), 192 S.C. 271, 6 S.E.2d 270 (1939). The Court said,

There is no rule of interpretation requiring the amended statute to be given a meaning which differs in any degree from that which would have been given it had the matter of the amendment been made a part of the original Act. Hence, unless the contrary intent is clearly indicated, the amended statute is to be construed as if the original statute had been repealed, and a new and independent Act in the amended form adopted.

*2 * * * Under this rule of construction, the amendment becomes a part of the original statute, as if it had always been contained therein.' (Emphasis supplied) [Windham v. Pace](#), 192 S.C. 271, 283-84, 6 S.E.2d 270 (1939).

Only when final relief in a matter has been granted before an amendment or repeal becomes effective will a modified or repealed law remain effective. See, [South Carolina v. Gaillard](#), 101 U.S. 433, 438 (1879), [Vance v. Rankin](#), 194 Ill. 625, 62 N.E. 807, 808 (1902) and 73 Am.Jur.2d [Statutes](#), § 389.

After the passage of the amendment, the State Employee Grievance Committee would no longer have jurisdiction over the grievance appeals of academic personnel, except those who are employed by the state technical schools. Academicians may pursue grievance appeals concerning adverse actions taken prior to the enactment of the amendment in accordance with the grievance procedures afforded by the state colleges and universities.

Sincerely,

Barbara J. Hamilton
State Attorney

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