

1980 WL 120709 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 12, 1980

***1 RE: County Grievance Procedure**

Ms. Deborah C. Westbrook
Assistant County Attorney
Greenville County Courthouse
Greenville, South Carolina 29601

Dear Ms. Westbrook:

You have recently requested an opinion from this Office concerning the Home Rule and the County and Municipal Employee Grievance Procedures Acts. Your questions are answered below.

(1) Under the provisions of [Section 4-9-30\(7\) of the 1976 Code](#), does the council have the right to delegate the matter to the Grievance Committee for the purpose of holding a hearing?

According to [Section 4-9-30\(7\), 1976 Code of Laws of South Carolina](#), the Home Rule Act, an aggrieved county employee has the choice of presenting a grievance concerning his dismissal to either the county council or the county grievance committee. If the employee elects to present such appeal to the county council, the council must hear it. The Code explicitly states, Any employee discharged by the administrator, elected official or designated department head shall be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. [§ 4-9-30\(7\) of the Code](#).

If, however, the grievance appeal concerns a matter other than termination of employment, the council may refer the appeal to the grievance committee pursuant to [Section 8-17-150, 1976 Code of Laws of South Carolina](#).

(2) In order to meet due process, does the testimony have to be completely transcribed or may a summary of the testimony be used for the purpose of an appeal to the County Council or perhaps to the Court?

One legal commentator states:

In the absence of a statute requiring the keeping of a written record of proceedings, it is held in relation to some boards and commissions that this is not necessary. However, where an administrative agency is required to base its action on findings to be made after a hearing, a definite record must be made of all evidence produced before the agency and all matters upon which it bases its order. 2 Am.Jur.2d, [Administrative Law](#), § 230.

[Section 8-17-140, 1976 Code of Laws of South Carolina](#), provides that the county council may make its decision based upon the findings and decision of the committee without conducting another hearing. Although the County and Municipal Employers Grievance Procedure Act does not require that the hearing be transcribed, it is advisable that the committee's findings include a transcript of the hearing.

(3) At the review conducted by County Council, which is not a hearing, does the aggrieved person have the right to be present and reargue his case? If so, should the Committee also be represented?

The County and Municipal Employees Grievance Procedure Act does not provide the aggrieved employee with an opportunity to reargue his case before the county council following a hearing before the grievance committee. [Section 8-17-140 of the Code](#) states that if ‘ . . . the governing body rejects the decision of the committee, it shall make its own decision without further hearing . . . ’ (Emphasis added).

*2 (4) May the aggrieved person communicate with Council members prior to Council's review in an effort to persuade them to his position? If so, what, if any, guidelines should be followed?

An aggrieved employee should not discuss his grievance appeal with individual council members prior to the council's review of his grievance appeal. According to the County and Municipal Employees Grievance Procedures Act, [§ 8-17-140 of the Code](#), the council's decision is required to be based upon the committee's ‘findings and decision.’

The Canons of Judicial Ethics require a judge not to permit parties to communicate with him ex parte about a case in which he is involved unless a law or rule allows such ex parte communications. See Canons 13, 17 and 33. Due regard should be given to these ethical considerations by any body which renders decisions in contested cases.

Sincerely,

Barbara J. Hamilton
Assistant Attorney General

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