

1980 WL 120917 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 7, 1980

***1 Re: Retirement Age of Highway Patrolmen**

Mr. Paul W. Cobb
Chief Commissioner
S.C. Department of Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 292.02

Dear Mr. Cobb:

You have requested advice as whether it is constitutionally permissible to require highway patrolmen to retire at a lower age than that required of other State employees by [Code of Laws of South Carolina §9-1-1530](#). Such action will necessarily require legislation enacted by the General Assembly.

There is not a constitutionally guaranteed right to a government job and any reasonable classification of government employees is permissible. The question is whether the State has a rational goal and whether the method used to meet that goal is reasonable. Police officers are considered 'para-military' in nature and any higher employment standards placed upon them are normally permissible. Further, when dealing solely with classification of employees for retirement or other purposes, use of age has been upheld with respect to police officers. [Massachusetts Board of Retirement vs. Murgia, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 \(1976\)](#). In that case it was held that a retirement age of 50 in Massachusetts for State police officers was not a denial of equal protection and, therefore, was not unconstitutional under the federal Constitution.

For a rational basis to be present in the case of a police officer, there must be a finding that a mandatory retirement age would increase the effectiveness of the police and their function of protecting the public. It was noted in the [Murgia](#) case that experts concede that there is a general relationship between advancing age and decreasing physical ability to respond to the demands of the job. It was pointed out in that case that Massachusetts also had a policy which required the state officers to pass a comprehensive physical examination biennially until age 40 and after that until mandatory retirement at age 50, they were required to pass a more rigorous annual examination, including electrocardiogram and test for gastrointestinal bleeding. Although the argument was made that since Murgia had passed that same exam four months before the retired, the age of 50 was, therefore, arbitrary. The court rejected this argument and used the presence of these tests to demonstrate the attempts on the part of the State to ensure physical ability to respond under the demands of the job. You may want to couple the change in the retirement age with a physical examination requirement similar to that in Massachusetts or other states.

I can foresee another angle of attack which might be used against such a proposal if the retirement age is reduced only for highway patrolmen as opposed to other law enforcement officers employed by the State. Some argument may be put forth that we are denying highway patrolmen equal protection as compared to SLED agents. If, however, the demands of the highway patrolmen's jobs are sufficiently distinct, and the classification, therefore, rationale, it would be upheld in the courts. Specific legislative findings need to be incorporated in whatever act is to be enacted to achieve this result.

***2** If I can be of any further assistance, please let me know.

Sincerely,

Richard D. Bybee

Assistant Attorney General

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