

1980 WL 120966 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 14, 1980

***1 Re: Annual Leave and Sick Leave Records**

Steve K. Good
Director
Administrative Services
South Carolina Judicial Department
Division of Accounting and Personnel
Post Office Box 11330
Columbia, South Carolina 29211

Dear Mr. Good:

You have recently asked this Office for its opinion concerning justices' and judges' obligations to keep annual leave and sick leave records. It is the opinion of this Office that those public officers need not keep such records.

Both the Sick Leave Act, [Sections 8-11-40 and 8-11-41, 1976 Code of Laws of South Carolina](#), and the Annual Leave Act, [Sections 8-11-610 et seq., 1976 Code of Laws of South Carolina](#), expressly apply to all employees of state agencies, departments and institutions. Supreme Court justices, Circuit Court judges and Family Court judges are public officers and are not public employees. One leading legal authority states that public offices are created by constitutions or statutes. 63 Am.Jur.2d Public Officers and Employees § 12, p. 634.

Briefly, the term, 'public office' embraces the idea of tenure, duration, fees, emoluments, powers and duties. All of them taken together constitute a public office. 63 Am.Jur.2d Public Officers and Employees, § 2, pp. 626-27.

The South Carolina Constitution provides for the creation of the offices of Supreme Court justices and Circuit Court judges. S.C. Constitution, Article V. The public office of Family Court judge is created by statute. Sections 14-21-425 et seq., 1976 Code of Laws of South Carolina. Thus, justices and judges have no obligation which arises from either the Annual Leave Act or the Sick Leave Act to keep annual leave and sick leave records because they are not state employees.

Additionally, the General Assembly has exempted certain public officials and public employees from the coverage of the personnel regulations promulgated by the State Budget and Control Board pursuant to the Personnel Administration Act, [Section 8-11-210 et seq., 1976 Code of Laws of South Carolina](#). The following individuals are among those who are exempt from the regulations:

Supreme Court justices and Circuit Court judges, referees, receivers, jurors, and masters in equity . . . Section 8-11-260(4), 1976 Code of Laws of South Carolina.

For the reasons presented, Supreme Court justices, Circuit Court judges and Family Court judges have no statutory obligations to keep annual leave and sick leave records.

Sincerely,

Barbara J. Hamilton
Assistant Attorney General

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