

1979 WL 42865 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1979

***1 Re: Dual Employment/Annual Leave**

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 contracted this Office for its opinion as to whether an employee of the University of South Carolina who has been credited with prorated annual leave since he undertook a second job with the Department of Highways and Public Transportation, is entitled to receive annual leave earnings as part of his terminal leave payments from the second job.

It is the opinion of this Office that the employee is entitled to receive annual leave earnings accrued prior to the promulgation of an explicit regulation providing that annual leave shall not be earned in a second job with the State. Such an express regulation is found in Section VII of the Dual Employment Policies and Procedures enacted on August 24, 1976, by the Budget and Control Board. [Section 8-11-680 of the 1976 Code](#) of Laws, provides that all State agencies shall be subject to the regulations adopted by the Budget and Control Board. Accordingly, the above-mentioned policies and procedures would apply to the Department of Highways and Public Transportation and a part-time employee of that agency who also held full-time State government employment could not accrue annual leave in the second job after 1976.

If the agency were to give this employee money purportedly as a terminal leave payment for annual leave accrued in a second job after the enactment of a prohibitive regulation, the agency would be acting beyond the scope of its authority. Moreover, the fact that the agency may have informed the employee that he had earned annual leave will not prevent the agency from changing its position. Equitable estoppel principles generally are not effective against governmental agencies acting beyond the scope of their authority. See generally, [Townes Associates, Ltd. v. City of Greenville](#), 221 S.E.2d 773, 776, 266 S.C. 81 (1976) and 28 Am.Jur.2d § 133, Estoppel and Waiver.

Sincerely,

Barbara J. Hamilton
State Attorney

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