

1980 WL 120826 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 18, 1980

***1 RE: Timeliness of a Grievance Appeal**

Jack S. Mullins, Ph.D.
Director
Budget and Control Board
Personnel Division
Room 333
Edgar Brown Building
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have recently asked this Office for its opinion about the timeliness of a grievance appeal filed by an employee of the South Carolina Department of Mental Health. According to your letter, the appellant received the final agency decision on June 26, 1980, and on July 1, 1980, the appellant's attorney postmarked an appeal to the 'State Personnel Division, S.C. Department of Mental Health, P. O. Box 485, Columbia, South Carolina, 29202.' On July 3, 1980, the appeal was received by the agency and the agency contacted the Personnel Division. Employees of the Personnel Division directed the agency to forward the appeal to the State Personnel Division. The appeal was received by the State Personnel Division on July 8, 1980.

According to state law, Section 8-17-40, 1976 Code of Laws of South Carolina a grievance appeal must be filed with the State Personnel Director within ten days of the employee's receiving the final decision of the agency head. According to a legal authority a time requirement for taking an administrative appeal 'may be held directory only and not mandatory.' 2 Am.Jur.2d, Administrative Law, § 544, p. 354. Since the appellant's attorney made a good faith effort to make a timely appeal by mailing the appeal well within the ten day filing period; since the Personnel Division had knowledge that the employee had initiated an appeal within the filing period; and since the agency will not be prejudiced by determining the appeal to be timely, inasmuch as it knew that an appeal had been taken within the filing period, it is the opinion of this Office that the appeal should be considered to have been filed in a timely fashion with the State Personnel Director.

Sincerely,

Barbara J. Hamilton
Assistant Attorney General

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