

1980 WL 120975 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 21, 1980

**\*1 Re: The State Employee Grievance Procedures Act**

Dr. Jack S. Mullins  
Director  
State Budget and Control Board  
Personnel Division  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have asked this Office for its opinion about the time limits in which an agency must render a decision concerning a grievance appeal and in which a grievant must file an appeal to the State Employee Grievance Committee with the State Personnel Director. In order to respond to your inquiry the following sections of the State Employee Grievance Procedures Act must be examined. An agency's grievance procedure plan shall provide that the department or agency shall act on a grievance within forty-five days. Failure to act positively within such period will be considered an adverse decision which the employee may appeal. Section 8-17-20, 1976 Code of Laws of South Carolina. (Emphasis added).

The State Employee Grievance Procedures Act also provides:

A state employee who wishes to appeal the decision of the agency or departmental grievance procedure to the State Employee Grievance Committee shall file a request for such an appeal within ten days of receipt of the decision from the agency or department head. Section 8-17-40, 1976 Code of Laws of South Carolina. (Emphasis added).

When a statute is plain and unambiguous, the words in the statute must be given a literal interpretation. [University of South Carolina v. Batson](#), 271 S.C. 242, 244, 246 S.E.2d 882, 883 (1978). By applying this rule of statutory construction when interpreting Section 8-17-20 of the Code, it is concluded that by operation of law, a grievant is deemed to have received an adverse decision from the agency if he does not receive a decision by the forty-fifth day following the initiation of his grievance appeal. Following this forty-five day period, the grievant may appeal to the State Employee Grievance Committee if he wishes to pursue the grievance appeal.

As stated in an opinion of this Office dated August 18, 1980,

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.

Thus, in construing sections 8-17-20 and 8-17-40 of the Code together, it is the opinion of this Office that in order for the State Personnel Director to determine that a grievance appeal has been filed timely, the appeal should be filed with the State Personnel Director by or on the fifty-fifth day following the initiation of the grievance appeal.

Sincerely,

Barbara J. Hamilton

Assistant Attorney General

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