

1977 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-109, 1977 WL 24451

Office of the Attorney General

State of South Carolina

Opinion No. 77-109

April 18, 1977

**\*1** The State Employee Grievance Committee is a 'State agency' as that term is defined in the State Register and Administrative Procedure Act, Section 1(1), 59 Acts and Joint Resolutions 1758 (1976).

TO: Senator James B. Stephen  
Senator  
South Carolina General Assembly

QUESTION PRESENTED:

Is the State Employee Grievance Committee a 'State agency' as that term is defined in the State Register and Administrative Procedure Act, Section 1(1), 59 Acts and Joint Resolutions 1758 (1976)?

AUTHORITIES CITED:

57 Acts and Joint Resolutions 399 (1971).

58 Acts and Joint Resolutions 2203 (1974).

59 Acts and Joint Resolutions 1758 (1976).

[Riggins v. Housing Authority of Seattle](#), 87 Wash.2d 87, 549 P.2d 480 (1976).

[Ohio State Federation of Licensed Nursing Homes v. Public Health Council](#), 113 Ohio 113, 172 N.E.2d 726 (1961).

DISCUSSION:

You have requested an opinion as to whether the State Employee Grievance Committee is a 'State agency' and therefore subject to the provisions of the State Register and Administrative Procedure Act, 59 Acts and Joint Resolutions 1758 (1976).

The State Employee Grievance Committee (hereinafter referred to as to Committee) was created by 57 Acts and Joint Resolutions 399 (1971), as amended by 58 Acts and Joint Resolutions 2203 (1974). The Committee consists of seven members who are appointed by the State Budget and Control Board. These members are selected on a representative basis from among the career service or appointed personnel of the several State agencies. The Committee is given power to hear appeals on any grievances involving issues which affect the career status or continuing employment for employees who have completed six months of satisfactory service. These appeals are accepted after all administrative remedies to secure acceptable adjudication within their own agency or department have been exhausted. The Committee is authorized to: accept evidence; issue subpoenas for files, records and all papers pertinent to any investigation; determine the order of testimony and the appearance of witnesses; call additional witnesses; subpoena witnesses; and make such rules and regulations as may be necessary to carry out the provisions of this Act.

Section 1(1) of 59 Acts and Joint Resolutions 1758 (1976) provides that an:

“Agency’ or ‘State agency’ means each state board, commission, department, executive department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.’

The Committee by the above definition would be considered a ‘State agency’ as it is authorized to determine contested cases. A ‘contested case’ is defined in Section 1(2) of 59 Acts and Joint Resolutions 1758 (1976) as follows:

‘. . . a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearings;’

\*2 Section 3 of 58 Acts and Joint Resolutions 2203 (1974) provides that permanent state employees who have completed six months of satisfactory service shall have the right of appeal to the State Employee Grievance Committee any grievances involving issues which affect their career status or continuing employment with the State after all administrative remedies to secure acceptable adjudication within their own agency or department have been exhausted. When the agency conducts its hearings on the issues specified in the act, it is adjudicating a contested case as that term is defined in Section 1(2) of 59 Acts and Joint Resolutions 1758 (1976). The fact that the Budget and Control Board can reject a decision made by the Committee does not alter the conclusion that the Committee determines contested cases.

The fact that the word ‘committee’ is not included in the definition of ‘agency’ is immaterial. [Riggins v. Housing Authority of Seattle](#), 87 Wash.2d 97, 549 P.2d 480 (1976); [Ohio State Federation of Licensed Nursing Homes v. Public Health Council](#), 113 Ohio 113, 172 N.E.2d 726 (1961). The above-cited cases indicate that the name of the body is not a controlling factor in resolving the question of whether a particular body is an agency covered by the Administrative Procedure Act. Both courts were called on to interpret a similar definition as the one found in 59 Acts and Joint Resolutions 1758 (1976).

#### CONCLUSION:

The State Employee Grievance Committee is a ‘State agency’ as that term is defined in the State Register and Administrative Procedure Act, Section 1(1), 59 Acts and Joint Resolutions 1758 (1976).

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