

1977 S.C. Op. Atty. Gen. 99 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-114, 1977 WL 24456

Office of the Attorney General

State of South Carolina

Opinion No. 77-114

April 25, 1977

\*1 The Honorable Thomas M. Marchant, III  
South Carolina House of Representatives  
Post Office Box 816  
Greenville, SC 29602

Dear Representative Marchant:

Your letter of April 13, 1977, to Attorney General McLeod, requesting an opinion as to the applicability of the Teacher Employment and Dismissal Act or related statutes to certain extra duty assignments or administrative responsibilities when performed by a teacher for extra pay, has been referred to me for response. In more general terms you have inquired as to whether the law protects extra duty assignments of a teacher in the same manner as it does the position of a regular full time teacher. It is the opinion of this office that administrative or extra duty assignments themselves are not included in or protected by the Teacher Employment and Dismissal Act (§§ 21-361-370.3, Code of Laws of South Carolina, 1962, as amended). Moreover, we are unaware of any other statutes applicable to this situation.

In previous opinions of this office we have suggested that the Employment and Dismissal of Teacher Act was not applicable to administrators as administrators. In other words a superintendent, district office employee or principal was not entitled to the procedural protection of this act prior to his removal from a particular administrative position. We have taken a similar position in some litigation. Accordingly, we do not think the Employment and Dismissal Act reaches the extra duty assignments contemplated by your letter. Such assignments are traditionally discretionary with administrators and are not protected by tenure laws or general employment arrangements.

Nevertheless, it should be observed that circumstances or situations which arise in connection with extra duty assignments may lead to dismissal of the teacher or nonrenewal of a teaching contract and would have to be dealt with as provided for in the Act. While the Act does not protect a coach's job as a coach, it does protect a coach's 'job' as a teacher which in theory, if not in fact, is considered his primary employment. As a practical matter in most teaching situations, the real distinction is not between regular duties and extra duties, but between extra duties which are compensable (i.e. some coaching) and extra duties which are normally not compensable (i.e. dramatics).

In conclusion, it is the opinion of this office that extra duty assignments are discretionary with the appropriate administrators and are not themselves (i.e. the extra duty assignments) covered by the Employment and Dismissal Act. However, it should be noted that this opinion is limited to the applicability of state statutes and does not consider the termination of compensable extra duty assignments which are related to constitutionally protected rights such as free speech or freedom of religion.

Sincerely,

Kenneth L. Childs  
Assistant Attorney General

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