

1977 S.C. Op. Atty. Gen. 155 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-204, 1977 WL 24546

Office of the Attorney General

State of South Carolina

Opinion No. 77-204

June 29, 1977

*1 TO: Jack S. Mullins

Director

Personnel Division

State of South Carolina

QUESTION:

Can sick leave accumulated by County employees of a Family Court be transferred to the State system when these County employees become State employees pursuant to Act 690 of 1976 (The Judicial Reform Act).

STATUTES AND TREATISES:

Section 1–42.2 of the Code of Laws of South Carolina (1962, as amended); and Act No. 186 Statutes at Large of South Carolina, 1977, ‘The Sick Leave Act’

Vol. 17 Code of Laws of South Carolina (1962, as amended), Sec. 1–9 ‘Sick Leave Guidelines’, p. 508;

Act No. 690 Statutes at Large of South Carolina, 1976; 3 Sutherland Statutory Construction, Sec. 65.02

Article VIII S. C. Constitution of 1895 as amended

[Bauer v. State](#), 267 S.C. 224, 227 S.E.2d 195 (1976)

[Torgerson v. Craver](#), ___ S.C. ___, 230 S.E.2d 228 (1976)

[Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723 (1949)

DISCUSSION:

Legislation which involves the expenditure of public funds should be strictly construed in order to prevent the unauthorized disbursement of public moneys. See 3 Sutherland Statutory Construction, Section 63.02. The transfer of sick leave from County personnel systems to the State personnel system would require the expenditure of State funds. The State is a new employer and any sick leave an employee has accumulated was earned while working for the County.

Sections 2 and 6 of Article VIII of Act 690 of 1976 (The Judicial Reform Act), which provide that certain County employees of the Family Court system become State employees, on July 1, 1977, does not mention the transfer of accumulated sick leave. Nor has the General Assembly provided for such transfer in the Appropriations Act. The instant question was brought to the attention of the State Budget and Control Board at its February 1, 1977 meeting and no action by the General Assembly or that Board has been taken. (See letter attached.) The only specific statutory authorization for transfer of sick leave is found in Section 1–42.2, Code of Laws of South Carolina (1962, as amended) which states in part as follows:

In the event an employee transfers from one State agency to another, his sick leave balance. shall also be transferred.

The State Budget and Control Board in Section 1–9 of the 'Sick Leave Guidelines', Vol. 17 Code of Laws of South Carolina (1962, as amended), p. 508, states that:

Employees who transfer from one State agency to another shall transfer their accumulated unused sick leave up to the total amount accrued adjusted to the scheduled workweek of the gaining agency.

Counties are local political subdivisions of the state and their employees are not State employees. See [Torgerson v. Craver](#), ___ S.C. ___, 230 S.E.2d 228 (1976); and [Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723 (1949). There is no statutory authorization for the transfer of sick leave from a County agency to a State agency, but only from one State agency to another State agency. When the language of the statute is plain and unambiguous as here, there is no basis for resorting to statutory interpretation. [Bauer v. State](#), 267 S.C. 224, 227 S.E.2d 195 (1976). It is therefore the opinion of this office that sick leave accumulated by persons employed by a county government cannot be transferred to the State personnel system under present statutes.

CONCLUSION:

*2 Sick leave accumulated by County employees of the Family Court system cannot be transferred to the State personnel system when these employees become State employees pursuant to Act 690 of 1976 (The Judicial Reform Act).

Stephen T. Savitz

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