

1978 WL 34654 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1978

\*1 Dr. Jack Mullins  
Director  
Personnel Division  
Suite 326  
Edgar Brown Building 1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Dr. Mullins:

Enclosed please find the opinion which you requested concerning the applicability of the Administrative Procedures Act to lower level grievance hearings conducted by state agencies. I trust this opinion will resolve any problems which you had in that area. You will note that the contested case provisions of the APA apply only to formal adjudicatory hearings. As the opinion points out, there is a distinction drawn between hearings of this type where a committee of one's peers hears evidence concerning grievances and where the employee and employer informally conduct discussions and conferences concerning the problems raised by a particular grievant. In the latter case, the contested case provisions would not apply. One of the problems which I foresee, that could not practically be handled by this opinion, is what is a 'formal hearing'. In reviewing the various agencies' grievance procedures, I noted that the term hearing was loosely used and rarely defined. To eliminate confusion presented by this situation, may I suggest that the terms which are to be utilized by the agencies in these grievance procedures be defined so as to leave no doubt as to whether a formal hearing is being offered to the grievant or an informal conference or discussion session where the rules of evidence would be inappropriate.

With reference to the question as to whether attorneys should be allowed to participate in grievance hearings, the opinion states that the agency must allow attorney participation at formal contested case hearings. While there are arguments that attorneys should be excluded at the lower level conferences and discussions so that the employee and employer can attempt to iron out their differences without taking the position of adversaries, it would seem to be better policy to allow such participation at all levels, if the grievant so desires. It should be noted that this is an agency decision which each agency should establish as it sees fit; and that there probably would not be a denial of due process if they were excluded since they can participate at the State Employee Grievance Committee and other formal hearings. Allowing attorney participation, however, would not appear, at this point, to unduly disrupt the grievance procedure and may develop harmonious relations between public employees and employers.

Finally, some confusion has arisen with respect to whether this office will represent agencies in their grievance hearings. Mr. McLeod will be out of town until Friday and the policy statement concerning this situation will be sent to you upon his return and approval.

Sincerely yours,

Richard D. Bybee  
Staff Attorney

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