

1978 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-14, 1978 WL 22500

Office of the Attorney General

State of South Carolina

Opinion No. 78-14

January 24, 1978

*1 TO: Jack S. Mullins

Director

Personnel Division

QUESTION:

What is the meaning of the term ‘alleged discrimination’ as used in the amended version of the State Employee Grievance Procedure Act found in S. C. Code Ann. § 8–17–20 (1977 Cum.Supp.)?

STATUTES, CASES, ETC:

1977 S. C. Acts & Joint Resolutions, Act No. 154;

[29 U.S.C.A. §§ 621, 793](#);

[42 U.S.C.A. § 2000e–2\(a\)\(1\) and \(2\)](#);

S. C. Code Ann. § 8–17–20 (1977 Cum.Supp.);

S. C. Code Ann. § 8–17–20 (1976);

[Gilbert Electric Co. v. Gilbert](#), ___ U.S. ___, 50 L.Ed.2d 343, 352 (1976);

[Vernon v. Harleysville Mutual Casualty Co.](#), 244 S.C. 152, 135 S.E.2d 841, 844 (1964);

[Purdy v. Moise](#), 223 S.C. 298, 75 S.E.2d 605, 608 (1953);

Sutherland, Statutory Construction §§ 22.30, 48.03, 72.07 (4th Ed.).

DISCUSSION:

Consideration of any relevant information concerning the legal history of a statute is an excellent guide for determining what object the act and its amendments are suppose to achieve. See Sutherland, Statutory Construction § 48.03 (4th Ed.). The State Employee Grievance Procedure Act, before amendment, as codified in S.C. Code Ann. § 8–17–20 (1976), read in pertinent part:

Classification shall be deemed a proper subject for consideration only as it relates to the application of the classification system to a particular individual . . .

However, in 1977, the General Assembly deleted this sentence through an amendment found in 1977 S.C. Acts & Joint Resolutions, Act No. 154, replacing this language with the following:

Classification and promotion shall be deemed proper subjects for consideration only as they relate to alleged discrimination. (emphasis added)

As a matter of statutory construction, it is presumed that the Legislature in adopting an amendment to a statute, intended to make some change to existing law. See [Vernon v. Harleysville Mutual Casualty Co.](#), 244 S.C. 152, 135 S.E.2d 841, 844 (1964).

The mere fact that the Legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or withdrawing an existing one. Therefore any material change in the language of the original act is presumed to indicate a change in legal rights. (emphasis added)

Sutherland, Statutory Construction § 22.30 (4th Ed.)

Under the statutory language, prior to amendment, distinctions made between individuals on the basis of managerial discretion evaluating an individual level of job performance had been the proper subject for a grievance. The 1977 amendments, however, clearly circumscribed the jurisdictional purview of the grievance procedure, making improper as a subject for consideration valid distinctions made between individuals on the basis of performance.

[A]s a matter of definition and common usage, not all distinctions amount to discrimination.

*2 Sutherland, Statutory Construction § 72.07 (4th Ed.).

The difference lies between discretion in the ordinary course of operation and illegal conduct.

Conduct falling within the scope of the term ‘discrimination’ as used by the General Assembly is appropriately defined by reference to that substantial body of law grounded upon judicial construction of the Equal Protection Clause of the 14th Amendment and upon construction of the term ‘discrimination’ as found in Title VII of the 1964 Civil Rights Act. See [42 U.S.C.A. § 2000e–2](#). As noted by the South Carolina Supreme Court:

The generally accepted meaning of words used in statutes or ordinances are to be accepted unless such words have a well recognized meaning in law; if so, they are presumed to have been used in that sense.

[Purdy v. Moise](#), 223 S.C. 298, 75 S.E.2d 605, 608 (1953).

This same approach was utilized by the U. S. Supreme Court in the recent decision of [General Electric Co. v. Gilbert](#), 50 L.Ed.2d 343 (1976):

While there is no necessary inference that Congress, in choosing this language [concerning ‘discrimination’], intended to incorporate into Title VII the concepts of discrimination which have evolved from court decisions construing the Equal Protection Clause of the 14th Amendment, the similarities between the Congressional language and some of those decisions surely indicate that the latter are a useful starting point in interpreting the former. Particularly in the case of defining the term ‘discrimination’, which Congress has nowhere in Title VII defined, those cases afford an existing body of law analyzing and discussing that term in a legal context not wholly dissimilar from the concerns which Congress manifested in enacting Title VII.

It is the opinion of this office that the General Assembly intended as proper subjects for consideration of the State Grievance Procedure only those acts of alleged discrimination based upon an ‘individual's race, color, religion, sex, or

national origin.’ See 42 U.S.C.A. § 2000e-2(a)(1) and (2). Also, distinctions made on the basis of age (29 U.S.C.A. § 621, et seq.) and handicap (29 U.S.C.A. § 793, et seq.) may be considered ‘discrimination’.

Distinctions made between individuals because of race, religion, sex, national origin, age, or handicap may result because of ‘differential treatment not justified by a relevant factual difference’. See Sutherland, *Statutory Construction*, § 72.07 (4th Ed.). Allegations of discriminatory conduct based on these factors therefore would be proper subjects for consideration under the Grievance Procedure. However, if such conduct is not alleged, and distinctions made between individuals are based on valid factual differences, the grievance would not be deemed a proper subject for consideration under the 1977 amendments.

CONCLUSION:

The 1977 amendments to the Employee Grievance Procedure Act preclude any grievances concerning classification and promotion arising out of the exercise of employers' discretion made in the ordinary course of operation based on valid factual differences between employees. Proper subjects for consideration under the Grievance Procedure include alleged acts of discrimination concerning classification and promotion involving differential treatment based upon race, religion, sex, national origin, age and handicap.

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