

1979 WL 42979 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1979

**\*1 Re: Grievances**

Dr. Jack S. Mullins  
State Budget and Control Board  
Personnel Division  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have asked this Office for its opinion as to whether it is proper for the State Employee Grievance Committee to receive information or evidence from the respondent agency prior to the date of the grievance hearing. It is the opinion of this Office that the Committee may properly obtain personnel files from respondent agencies prior to grievance hearings.

The relevant sections of the 1976 South Carolina Code of Laws provide:

The Committee shall have the authority to issue subpoenas for files, records and papers pertinent to any investigation . . .  
Section 8-17-30 of the Code, and

The agency hearing a contested case may issue in the name of the agency subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records on its own behalf or, upon request, on behalf of any other party to the case. (Emphasis Added) [Section 1-23-320 of the Code](#).

The law also provides that once the State Personnel Director has determined that the request for a grievance is in order, The State Personnel Division shall arrange for the reproduction of pertinent records and papers and distribute copies to the members of the Committee prior to the date of the hearing. (Emphasis added.) Section 8-17-40 of the Code.

Reading these provisions of law together, it is the conclusion of this Office that the Grievance Committee may subpoena the personnel file of a grievant and that it is the Personnel Division's affirmative duty to distribute copies of the file to Committee members prior to the grievance hearing.

Mr. Rosen's letter reflects his mistaken belief that the Committee may only consider evidence presented by a party during a grievance hearing. Sections 8-17-30 and [1-23-320 of the Code](#) indicate that the Committee may examine files, records, books, etc. as part of its own investigation into the contested case or grievance. Additionally, [Section 1-23-330\(4\) of the Code](#) permits the Committee to take notice of 'judicially cognizable facts' and 'generally recognized technical or scientific facts.' Thus, the Committee is not limited to an examination of evidence produced during the grievance hearing.

Sincerely,

Barbara J. Hamilton  
State Attorney

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