

1979 WL 43569 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1979

***1 RE: South Carolina State Library [Regulation 75-1](#)**

Ms. Betty E. Callaham
State Librarian
South Carolina State Library
Post Office Box 11469
Columbia, South Carolina 29211

Dear Ms. Callaham:

During a telephone conversation several weeks ago, you requested that I review a provision in your [Regulation 75-1](#) which prohibits the use of State aid funds for the salary of any individual past the retirement age of 65. You further advised that you intended to have this regulation amended to change the retirement age from 65 to 70.

The 1978 amendments to the federal Age Discrimination and Employment Act prohibit age discrimination of individuals between the ages of 40 and 70. P. L. 95-256, Section 3(a). In other words, a person within the coverage of the Act may not be discharged because of age if he is under 70. In this regard, I am enclosing for your information a copy of an opinion that our office issued last year concluding that school teachers could not be involuntarily retired before the age of 70.

It is my opinion that portion of [Regulation 75-1](#) which prohibits the use of State aid funds to pay the salary of any individual past the retirement age of 65 conflicts with the federal Age Discrimination and Employment Act, which became effective on January 1, 1979, and under the Supremacy Clause of the United States Constitution was rendered invalid on that date. I see no problem, however, with enacting a similar regulation prohibiting the use of State aid funds for the salary of an individual past the retirement age of 70.

I hope this answers the question which you raised. If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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