

1978 WL 34801 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 23, 1978

*1 Mr. William H. Wesson, Jr.
Chairman
Interagency Merit System Council
108 Osborne Building
University of South Carolina
Columbia, South Carolina 29206

Dear Mr. Wesson:

You requested an opinion of this Office regarding the jurisdiction of the Interagency Merit System Council to hear an appeal from an employee of the Interagency Merit System Council, who alleges 'discriminatory employment practices' concerning promotion and qualifications.

[S.C. Code Ann. § 8-19-50\(2\) \(1976\)](#) authorizes the Interagency Council to promulgate rules and regulations effectuating the purposes for which the council was created. Under Article IV, Section 1, of the Rule, entitled 'Equal Employment Opportunity—Purpose and Scope', it is stated in part:

Discrimination against any persons in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, or other non-merit factors will be prohibited . . . Every employee and every applicant subject to the Merit System rule shall have the right of appeal to the Council through appropriate administrative channels whenever he or she has reason to believe that the intent of the Merit System rule has been violated.

Assuming that this rule has been duly promulgated, it has the force and effect of a law immediately upon going into effect. 1 Am.Jur.2d [Administrative Law](#) § 95 (1962). As long as the rule or regulation has not been repealed or modified, 'the agency is as much bound by such rule as the public to whom it is directed'. 2 Am.Jur.2d [Administrative Law](#) § 309 (1962).

The allegations made by the grievant on the appeal form on their face concern charges of discrimination relating to performance evaluations utilized for determining promotions. The language contained in Article IV, of the Rule issued by the Council, cited above, appears to be broadly drawn in this respect. Nonetheless, because the agency drafted the Rule in question, it is in a particularly good position to make its own interpretations thereof. I hope this provides sufficient information.

With kind regards, I remain
Very truly yours,

Nathan Kaminski, Jr.
Assistant Attorney General

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