

1978 S.C. Op. Atty. Gen. 183 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-150, 1978 WL 22618

Office of the Attorney General

State of South Carolina

Opinion No. 78-150

August 8, 1978

***1 SUBJECT: Employees, Public, Labor Relations**

A faculty member of a state college or university may grieve to the State Employee Grievance Committee once he has completed six months of satisfactory service, or after an official extension of not to exceed three months and he is appraised satisfactorily.

TO: Dr. Jack S. Mullins
Director
State Personnel Division

QUESTIONS:

1. May a non-tenured faculty member of a college or university grieve to the State Employee Grievance Committee?
2. Is a faculty member of a college or university a 'permanent state employee' within the context of § 8-17-30, Code of Laws of South Carolina (1976).

STATUTES AND CASES:

R-59-5, §§ 8-17-40, [59-117-40](#), [8-11-270](#), [8-11-210 et seq.](#), [Code of Laws of South Carolina \(1976\)](#), as amended; §§ 0:01, 0:04 [State Personnel Manual](#); [Restatement of Agency](#) 2d. § 2201.

DISCUSSION:

The authority to determine jurisdiction in this matter is set forth in § 8-17-40, Code of Laws of South Carolina (1976), as amended:

The State Personnel Director shall assemble all records, reports and documentation of the earlier hearings on the grievance and review the case to ascertain that there has been full compliance with the established grievance policies, procedures and regulations within the agency or department involved and determine whether the action is grievable to the State Committee.

The rules and regulations of the State Employee Grievance Committee, R-59-5, Code of Laws of South Carolina (1976), as amended, states:

Upon receipt of appeals of questionable jurisdiction, the State Personnel Director shall immediately request an opinion from the Attorney General.

In determining whether or not a person is an employee of a particular agency, one should look to such indicators as method of payment, provision of equipment, and right to control. See: Restatement of Agency 2d., § 2201, 'Definition of Servant'.

The University of South Carolina is a state institution of higher learning governed by a Board of Trustees under § 59–117–40, Code of Laws of South Carolina (1976). The salaries and operating expenses of the employees of the University are provided for in the general appropriation acts.

Academic personnel employed by the University are 'state employees'. As such, they are entitled to all the rights of other state employees, unless specifically excluded by statute. Academic personnel are exempted from the state classification and compensation plan under § 8–11–270, but are not excluded from the general personnel administration plan under § 8–11–210 et seq. Although many states do administer separate personnel plans for academic institutions, there is no separate personnel plan for such employees by law in South Carolina.

Act 471 of the 1978 Acts and Joint Resolutions, which amends § 8–17–30 of the 1976 Code provides:

'There is hereby created the State Employee Grievance Committee constituted and appointed as hereinafter provided. Permanent state employees who have completed six months of satisfactory service or who, after an official extension not to exceed three months for marginal performance are given a satisfactory performance appraisal shall have the right to appeal to the State Employee Grievance Committee any grievances involving those issues specified in Section 8–17–20 after all administrative remedies to secure acceptable adjudication within their own agency or department have been exhausted. If an employee does not receive an appraisal on the official appraisal date, he shall be considered to have performed in a satisfactory manner and to have grievance rights under this article.'

*2 A permanent employee is 'a full or part time employee whose permanent retention has been approved at the completion of a probationary period'. (Definition 'Permanent employee', State Personnel Manual, § 0:01). In contrast, a temporary employee is 'one who is employed on a full time or part time basis for a period not exceeding six months to provide for specific, defined projects, for peak work loads, and for short time replacement of permanent employees on leave of absence. Temporary employees have no continuing status'. § 0:04, Manual, supra.

Since academic personnel at the state colleges and universities have traditionally been employed for a period in excess of six months, it is the opinion of this Office that such employees acquire rights under the Grievance Procedure Act after six months of satisfactory service, or after an official extension not to exceed three months for a marginal performance appraisal. If an employee is not appraised on his official appraisal date, he shall be considered to have performed in a satisfactory manner.

CONCLUSION:

Whether a faculty member of a college or university is or is not tenured does not determine his right to grieve to the State Employee Grievance Committee. If such employee has completed six months of satisfactory service, or after an official extension not to exceed three months is appraised satisfactory, he acquires the right to grieve to the State Employee Grievance Committee.

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