

1978 WL 35144 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 2, 1978

***1 SUBJECT: Judges**

Family Court judges are public officers and are not subject to the sick and annual leave statutes which apply to state employees.

Dr. Jack S. Mullins
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QUESTION:

Are Family Court judges included under the sick and annual leave statutes which apply to state employees?

STATUTES AND CASES:

§§ 8-1-10, 8-11-40, 8-11-680, 14-21-425, 14-21-430, 14-21-485, 14-21-495 of the Code of Laws of South Carolina (1976); Article XV Sec. 1 of the Constitution of South Carolina (1895) as amended 1971; [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762; [Todd v. U.S.](#), 15 S.Ct. 889, 891, 158 U.S. 278, 39 L.Ed. 982.

DISCUSSION:

In [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762, the South Carolina Supreme Court distinguished public officer and employee as:

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned and which are continuing and not occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers and though the employment be about public work or business, is a mere employee.

Further [§ 8-1-10 of the Code of Laws of South Carolina \(1976\)](#) states that:

The term 'public officer' shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.

Section 14-21-425 of the Code of Laws of South Carolina (1976) is entitled: 'Qualifications, election and terms of judges; numbering of judgeships in circuits having more than one judge; filling of vacancies in the office of judge.' Pursuant to the above statute, Family Court judges are elected by the General Assembly except for their initial term. They receive compensation as provided by the General Assembly in the Annual Appropriation Act, [§ 14-21-430, Code of Laws of South Carolina \(1976\)](#). The General Assembly also provides for the salaries, equipment and supplies of the Family Court

in § 14-21-485 Code of Laws of South Carolina (1976) Family Court judges are permitted to participate in the State Retirement System as provided in § 14-21-495 of the Code of Laws of South Carolina (1976).

The method of removal of judges is determined by the [State Constitution, Article XV, Sec. 1](#) of the Constitution of South Carolina (1895) as amended in 1971 states in part that:

The House of Representatives alone shall have the power of impeachment in cases of serious crimes or serious misconduct in office by officials elected in a statewide basis, state judges and such other state officers as may be designated by law.

Attorney General Daniel R. McLeod issued an opinion on October 5, 1976, which stated that persons elected on a statewide basis are not subject to the sick leave statute. 1975-76 Op. Att'y. Gen. No. 4475, copy enclosed.

CONCLUSION:

*2 In the opinion of this Office, a Family Court judge is a public officer not a state employee and as such is not included under the sick and annual leave statutes, specifically §§ 8-11-40 and 8-11-680 of the Code of Laws of South Carolina (1976), provided for state employees. This is based upon the method of selection of judges, his term of office, his compensation by the state and other allowances such as per diem expenses, the retirement system, and the method of removing judges from office. Also, the United States Supreme Court in [Todd v. U.S.](#), 15 S.Ct. 889, 891, 158 U.S. 278, 39 L.Ed. 982 stated that: 'A judge is a public officer, who, by virtue of his office, is clothed with judicial authorities.'

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