

1978 WL 35145 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 3, 1978

*1 Timothy G. Quinn, Esquire
Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Quinn:

You have requested an opinion concerning the possible retroactive effect of the state supreme court's decision in U.S.C. v. Batson, decided August 15, 1978. The case, which only involved professors who were about to be retired in the near future, held that a 1949 statute ([§ 9-1-1530](#), [1976 Code](#) of Laws) prohibited the University of South Carolina from mandatorily retiring professors at age 65, as had previously been the practice for many years. The question is whether or not, since the statute dates from 1949, the Court's interpretation of it should also apply throughout the life of the statute, or whether it should apply only prospectively.

The U.S. Supreme Court has concluded that 'the Constitution neither prohibits nor requires retrospective effect' of a new constitutional rule. [Linkletter v. Walker](#), 381 U.S. 618, 629 (1965). The same is true for a court decision which overrules an earlier decision. See [Annot. 10 ALR 3d 1371, 1378](#). No cases have been found which deal with the retroactivity of a court's construction of an act which previously had been construed differently by persons affected thereby. In the absence of authority to the contrary, it will be assumed that the usual rules concerning retroactivity apply in this situation. Those rules are that the question of retroactivity is 'one of judicial policy rather than of judicial power,' [10 ALR3d 1371, 1378](#), and that the circumstances of each case determine whether a rule will be applied retroactively. Specifically, three primary factors determine the question:

(1) the degree to which the prior rule may have been justifiably relied on, especially where matters of property or contract law are involved, (2) the degree to which the newly announced rule can be effectuated without being applied retroactively, and (3) the likelihood that retroactive operation of the overruling decision may substantially burden the administration of justice.

The third factor, which concerns the possible reopening of past judgments, does not exist here. The second, effectuation of the new policy absent retroactive effect, is clearly present because the rule will apply to all future cases concerning faculty retirement. As to the first, it is the opinion of this Office that the University, as a general rule, was justified in relying on its prior policy which had been in effect for many years without legal challenge or dissent. Even the attorneys for the professors in the Batson case did not place primary reliance on [§ 9-1-1530](#). In addition, contract rights have been affected (where replacements were hired), and other relationships have changed, as in the case of retirement benefits having been paid. Accordingly, it is the opinion of this Office that the interests of justice would not be served by giving retroactive effect to the Batson case.

In one specific situation, however, the answer is not as clear. That situation involves a faculty member involuntarily retired on June 30, 1978, six weeks before the Batson decision was rendered. On the one hand, it could be argued that since the University had been enjoined from retiring three professors involved in the Batson case, it should not have retired any other persons during the suit's pendency. On the other hand, it could be argued that the affected person could have easily intervened in the case, as did one other professor, to make the temporary injunction specifically applicable to her. The position has since been filled. On the whole, it appears that the better course would have been for the University

not to have acted, since its reliance could not have been as justifiable as it was prior to the legal challenge, but we feel that this matter needs a full hearing and that it would probably be best resolved by the courts.

Sincerely yours,

*2 Kenneth P. Woodington
Assistant Attorney General

1978 WL 35145 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.