

1978 S.C. Op. Atty. Gen. 190 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-159, 1978 WL 22627

Office of the Attorney General

State of South Carolina

Opinion No. 78-159

SEPTEMBER 20, 1978

***1 SUBJECT: Administrative Procedure, Statutes**

(1) As a general principle, the administrative procedures requirements of Article 2, Chapter 23 of Title I of the 1976 Code are applicable to hearings conducted before the State Human Affairs Commission.

(2) Notwithstanding the foregoing, the State Human Affairs Commission is not bound to follow the rules of evidence in hearings conducted before it.

TO: Henry G. Heriot
Legal Counsel
State Board for Technical and Comprehensive
Education

QUESTIONS:

(1) Are the administrative procedures requirements of Article 2, Chapter 23 of Title I of the 1976 Code applicable to hearings conducted before the State Human Affairs Commission?

(2) Is the State Human Affairs Commission bound to follow the rules of evidence in hearings conducted before it?

STATUTES AND CASES:

Code of Laws of South Carolina (1976):

§§ 1-13-20, 1-13-40, 1-13-70, 1-13-90(d)(1), 1-13-90(d)(2), 1-13-90(d)(4), 1-13-90(d)(13), 1-23-310(2), 1-23-330(1), 1-23-380, 1-23-390.

65-7(10) Rules of the South Carolina Commission on Human Affairs.

[Criterion Insurance Company v. Hoffman](#), 258 S.C. 282, 188 S.E.2d 459 (1972); [Panama Canal Company v. Anderson](#), 312 F.2d 98 (5th Cir. 1963), cert. denied 375 U.S. 832, 11 L.Ed.2d 63, 84 S.Ct. 43 (1963).

82 C.J.S. Statutes § 369 (1953).

DISCUSSION:

You have asked whether the administrative procedures requirements of Article 2, Chapter 23 of Title I of the 1976 Code (hereinafter 'Administrative Procedures Act' or 'APA') are applicable to hearings conducted before the State Human Affairs Commission. Specifically, you have also asked whether the Commission is bound to follow the rules of evidence in its hearings. While it is the opinion of this Office that, as a general principle, the requirements of the APA apply to

hearings before the Human Affairs Commission, it is also the opinion of this office that the Commission is not bound to follow the rules of evidence in its hearings.

The requirements outlined in the Administrative Procedures Act are only applicable to matters which are contested cases. 'Contested case' is defined in [§ 1-23-310\(2\) of the Code](#) as follows:

a proceeding, including but not restricted to rate making, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

Thus, if the law requires that the Commission hold a hearing before it determines rights, privileges or duties of a party, then a case is a 'contested case' within the meaning of the APA. And if the case is a 'contested case' within the meaning of the APA, then the procedural requirements of that Act are generally applicable.

The South Carolina Human Affairs Law was enacted to prohibit the practice of discrimination against any individual because of race, creed, color, sex or national origin. [§ 1-13-20 S.C. Code \(1976\)](#). To effectuate the policies of the Act, the Commission on Human Affairs was created, [§ 1-13-40](#), and given a wide array of powers. [§ 1-13-70](#). Upon receipt of a complaint alleging unfair or discriminatory practices, an investigation is initiated under the direction of a supervisory commission member. [§§ 1-13-90\(d\)\(1\) and \(2\)](#). At the conclusion of the investigation, the supervisory commission member reviews the case file and issues an order, either of dismissal or for a hearing. [§ 1-13-90\(d\)\(4\)](#). If the supervisory commission member does not dismiss a complaint, then a hearing is required if the case goes forward. The law does not empower the Commission to determine the rights or duties of a party complained of, where the complaint has not been dismissed by the supervisory commission member, unless a hearing is held. Although Commission Rule 65-7(10) provides that a hearing may be waived, such waiver may be had only with the written consent of the party complained of. It is therefore the opinion of this office that hearing held before the Human Affairs Commission are 'contested cases' to which the requirements of the APA apply.

*2 Notwithstanding the foregoing, however, it is the opinion of this office that the Commission is not bound to follow the rules of evidence in its hearings, even though observance of such rules is mandated by the APA. The APA provides that in contested cases, '(t)he rules of evidence as applied in civil cases in the Court of Common Pleas shall be followed.' [§ 1-23-330\(1\)](#). The Human Affairs Law, on the other hand, provides that '(t)he Commission shall not be bound by the rules of evidence prevailing in courts of law or equity.' [§ 1-13-90\(d\)\(13\)](#). The APA is a general law prescribing the procedures to be followed by state agencies generally in hearings therefore them. The Human Affairs Law is a special law which contains provisions applicable only to hearings before the Human Affairs Commission. It is well settled that a general statute and a special statute must be read together and harmonized where possible. However, as to any conflict between the two, the special statute must control. [Criterion Insurance Company vs. Hoffman, 258 S.C. 282, 188 S.E.2d 459 \(1972\)](#). This is true irrespective of whether the special statute was enacted before or after the general statute. 82 C.J.S. Statutes [§ 369](#) (1953); see also, [Panama Canal Company vs. Anderson, 312 F.2d 98 \(5th Cir. 1963\)](#), cert. denied [375 U.S. 832, 11 L.Ed2d 63, 84 S.Ct. 43 \(1963\)](#). Sections [1-23-330\(1\)](#) and [1-13-90\(d\)\(13\)](#) represent a clear conflict between general and special statutes. As the special statute, [§ 1-13-90\(d\)\(13\)](#) must control. Criterion. It should be noted that in other areas the Human Affairs Law and the APA may easily be read together and harmonized. Criterion. For example, since the Human Affairs Law does not in any way provide for appeals from decisions of the Commission, the relevant sections of the APA ([§§ 1-23-380 and 1-23-390 of the Code](#)) should be applicable.

CONCLUSION:

It is therefore the opinion of this office that, as a general principle, the administrative procedures requirements of Article 2, Chapter 23 of Title I of the 1976 Code are applicable to hearings conducted before the State Human Affairs Commission. However, the State Human Affairs Commission is not bound to follow the rules of evidence in hearings conducted before it.

L. Kennedy Boggs
STATE ATTORNEY

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