

1978 WL 35135 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 27, 1978

*1 Mr. N. C. Frederick
Vice President for Business and Finance
Francis Marion College
Florence, SC 29501

Dear Mr. Frederick:

I am in receipt of your recent letter. You have advised me that Francis Marion College requires all of its employees to retire at age sixty-five (65). You have inquired as to the effect of the recent South Carolina Supreme Court case, U.S.C. v. Batson, Op. No. 20743, concerning retirement of University of South Carolina college professors on the retirement policy of Francis Marion College.

The Supreme Court held that the retirement policy of the University of South Carolina requiring teaching faculty to retire at age sixty-five (65) was in contravention of [Section 9-1-1530 of the South Carolina Code](#) of Laws, 1976, which sets the mandatory retirement age at age seventy (70). Section 9-1-10(4) defines the word 'employee' for purposes of the retirement system. Section 9-1-10(4)(b) states that an employee is 'the president, any dean, professor, or teacher or any other person employed in any college, university or educational institution of higher learning supported by and under the control of the State.' [Section 9-1-1530](#) states that State employees shall retire at age seventy (70). The Supreme Court in U.S.C. v. Batson, stated in part that

There are no provisions for retirement of 'employees' prior to the age of seventy (70). In the absence of any exceptions for retirement of 'employees' prior to seventy (70), it must be concluded that the General Assembly intended that there be none. When the statute mandates retirement at seventy (70), without exceptions, it clearly sets seventy (70) years as both maximum and minimum mandatory retirement age.

I am unaware of any set of facts which would distinguish the retirement policy of Francis Marion College from the retirement policy of the University of South Carolina which was held to be in conflict with the statutory provisions governing retirement. Therefore, Francis Marion College would also be governed by the rationale of this opinion and could not enforce a retirement policy for its employees that would require that employee to retire before the age of seventy (70).

I am enclosing a copy of the opinion in U.S.C. v. Batson for your information.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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