

1978 WL 34596 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 31, 1978

***1 RE: Robert Henry Lichtenbert**

Dr. Jack S. Mullins
Director
State Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have recently asked me to review the file of Robert H. Lichtenbert, formerly a non-tenured faculty member of The Citadel in order to determine whether he has exhausted all administrative remedies within his agency.

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

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

According to an opinion written by this Office:

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.

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. (Emphasis Added).

The personnel file of Robert Henry Lichtenbert includes information to the effect that Mr. Lichtenbert was employed by The Citadel on August 20, 1973, and he continued to be in its employ through the end of the 1977-78 academic year. Thus, Mr. Lichtenbert was a permanent employee (See definition of permanent employee—one who is 'a full or part-time employee whose permanent retention has been approved at the completion of a probation period.' State Personnel Manual § 0.01.)

*2 Mr. Lichtenbert is not entitled to grieve before the State Grievance Committee at the present time. Act 471 of the Acts and Joint Resolutions requires that 'all administrative remedies' within an agency must be exhausted before an appeal to the State Employee Grievance Committee can be made. The Citadel's State Employee Grievance and Appeal Procedure permits a grievance to be filed at any time after a grievable incident has occurred. Since Mr. Lichtenbert may still grieve through the above-mentioned procedure, he has not exhausted 'all administrative remedies' within his agency.

In conclusion, as the law presently stands, all administrative remedies within an agency must be exhausted before an appeal to the State Employee Grievance Committee can be made. Nontenured faculty members who wish to appeal to the Committee must grieve through both the channel for academic employee appeals (if this avenue is available) and through the employee grievance and appeal procedure.

Sincerely,

Barbara J. Hamilton
State Attorney

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