

1975 S.C. Op. Atty. Gen. 138 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4060, 1975 WL 22357

Office of the Attorney General

State of South Carolina

Opinion No. 4060

July 25, 1975

*1 Instructors at technical education centers are State employees and are, therefore, subject to provisions relating to salary and grievance matters applicable to such employees.

TO: Dr. Charles E. Palmer

Executive Director

State Board For Technical And Comprehensive Education

Questions Presented:

Are instructors at technical education centers State employees?

Authorities:

‘State officers or boards have power to hire or appoint agents or other employees whenever such power is expressly conferred by law or implied from the nature of the duties to be performed, but not otherwise.’ 81 C.J.S., States, § 70 Appointment and Election, Agents and Employees. In determining whether or not a person is an employee of a particular agency, one should look to such indicators as method of payment, provision of equipment, and right to control. See Restatement of the Law (Second), Agency 2d, § 220 Definition of Servant (2).

Relevant statutes are Sections 21–704 et seq., Code of Laws of South, and the 1975–76 Appropriations Act (1974 act bearing Ratification Number 321).

Discussion:

1. Method of payment.

The 1975–76 Appropriation Act provides: ‘Section 31, State Board for Technical and Comprehensive Education, Item IV, Technical Education Centers, Personal Service: Unclassified Positions: Instructors (1378) ... \$14,882,150.00.’

2. Equipment.

The local board generally provides for the creation, maintenance, and operations of the center or facility itself. See Sections 21–705 et seq., Code of Laws of South Carolina. On the other hand, the State Board provides the instructional supplies and equipment. See Item IV for State Board in 1975–76 Appropriation Act.

3. Right to control.

In 1972, pursuant to § 21–704.12, the State Board assumed jurisdiction and control over the technical education centers, which became agencies and instrumentalities of the State. See Attorney General's Opn. from Assistant Attorney General Timothy G. Quinn to Dr. Charles E. Palmer, dated January 16, 1974. Section 21–704.15 provides further that the State

Board is responsible for the development and implementation of a training program and has policy and budgetary control over participation at the local level. See Subsections (1) and (3). In addition, the State Board has authority to 'make such rules and regulations and enter into such contracts as it deems necessary to fulfill the requirements of this article.' See Section 21-704.11.

Conclusion:

Since these statutes relate to the same subject matter, they must be construed together insofar as practical, or in pari materia, so as to give effect to all. The State provides the salary and instructional materials and has the responsibility and corresponding right of implementing the instructional program of the technical centers. These specific responsibilities plus the State Board's very broad right of control leads me to the conclusion that the instructors at the technical centers are State employees. Any employment of personnel allowed by statute to local boards is now subject to the initial and continued approval of the State Board.

*2 The salary of these instructors, as State employees in unclassified positions, is subject to the approval of the State Budget and Control Board and is 'in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Budget and Control Board.' 1975-76 Appropriations Act, Section 101. Any grievance of the instructors over salary can follow the course outlined in State Employee Grievance Procedure Act of 1974, Sections 1-49.15 et seq., Code of Laws of South Carolina.

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