

1975 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4110, 1975 WL 22406

Office of the Attorney General

State of South Carolina

Opinion No. 4110

September 8, 1975

*1 Section 18, Act No. 191, Acts of 1975, does not bar the Attorney General and his assistants from appearing before the Public Service Commission in rate or price fixing matters in behalf of the people of the State and/or as legal counsel to the Commission.

TO: Chairman
Public Service Commission

QUESTION PRESENTED:

Does Section 18, Act 191, Acts of 1975 (Ethics Act), construed in light of the Act's manifest purpose and in relation to other statutes and common law principles affecting the Attorney General, bar the Attorney General and his assistants from appearing before the Public Service Commission in rate or price fixing matters as consumer advocate in behalf of the people of the State and/or as legal counsel to the Commission?

STATUTES, CASES, ETC., INVOLVED:

Act No. 191, Acts of 1975 (Ethics Act);

Act No. 237, Acts of 1975 (General Appropriations);

Section 1–238, Code of Laws of South Carolina, 1962;

Section 58–62, Code of Laws of South Carolina, 1962;

Section 1–19, Code of Laws of South Carolina, 1962, as amended;

[State Ex Rel McLeod v. Montgomery](#), 244 SC 308, 136 SE2d 778 (1964);

[Sherbert v. Verner](#), 240 SC 286, 125 SE2d 737 (1962);

[City of Columbia v. Niagara Falls Ins.](#), 249 SC 388, 154 SE2d 674 (1967);

[State Ex Rel McLeod v. Ellisor](#), 259 SC 364, 192 SE2d 188 (1972);

[Southern Ry. Co. v. SC State Hwy. Dept.](#), 237 SC 75, 115 SE2d 685 (1960);

[State Ex Rel Daniel v. Broad River Power Co.](#), 157 SC 1, 153 SE 537 (1929);

[Crowder v. Carroll](#), 251 SC 192, 161 SE2d 235 (1968);

Ruling Case Law 916;

6 Corpus Juris, Attorney General § 13 (1916);

[State Ex Rel Olsen v. Public Service Comm'n](#), 129 Mont. 106, 283 P2d 594 (1955);

[Alexander v. N.J. Power and Light Co.](#), 122 A2d 339 (1956);

[State Ex Rel Shevin v. Yarborough](#), 257 So2d 891 (1972),

[Petition of Public Services Transport](#), 5 NJ 196, 74 A2d 580 (1950).

DISCUSSION:

Introduction. The 1975 General Assembly enacted a comprehensive ethics law for public employees and public officials. The Act was approved by the Governor on May 29, 1975, and the provision here in question took effect on that date.

Act 191 creates a State Ethics Commission, which is empowered to implement the Act with respect to all public employees and public officials except members of the General Assembly. Section 4(g) and (h) of the Act imposes on the Commission the duty to issue advisory opinions on the Act's requirements and to promulgate rules and regulations to carry out its provisions. Were the Commission now in formal existence the question addressed in this Opinion would be referred to the Commission.

The Ethics Act sets forth certain rules of conduct for public officials and public employees, establishes rules for election campaign practices, provides for disclosure by public officials and certain public employees of their business transactions with governmental entities, and provides penalties for violations of the Act.

***2 Purposes of Act.** The purposes of the Act as here relevant are stated in the preamble:

The General Assembly hereby finds and declares that elected public office and public employment is a public trust and any effort to realize personal gain through official conduct is a violation of that trust. It further finds that the people of South Carolina want legislation to insure that conflicts of interest of public officials and employees be eliminated to the extent possible and that violations of rules of ethical conduct be investigated and punished where appropriate . . . [emphasis added]

Part IV of the Act, entitled Rules of Conduct, comprises §§ 12–20 and sets forth the rules of conduct applicable to public officials and public employees. Section 12 is a general statement which reflects the overall purpose of the Rules of Conduct section and is consistent with the above-quoted language from the preamble. Section 12 provides:

No public official or public employee shall use his official position to obtain financial gain for himself. [emphasis added]

Section 18, the provision in question, provides in relevant part as follows:

No public official or public employee shall appear before the South Carolina Public Service Commission, the South Carolina Dairy Commission or the South Carolina Insurance Commission in rate or price fixing matters . . .

The South Carolina Supreme Court has stated that it is a fundamental principle of statutory construction that statutes must be construed in light of the evil they seek to remedy and in the light of the conditions obtaining at the time of their enactment. (*Sherbert v. Verner*) The Court has further stated that the true guide to statutory construction is not

the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. (*City of Columbia v. Niagara Falls Ins. Co.*) It seems apparent from the preamble as well as from the legislative and public debate attendant to the passage of the Act that the Act was intended to prohibit the use of public office or public employment to secure personal gain through official conduct and not intended to bar the Attorney General and his assistants from appearing in the public interest for the people of the State and as counsel to the Commission.

Construction of Act in Relation to Other Statutes. In considering the meaning of Section 18 as it applies to the powers of the Attorney General and his assistants with respect to the Public Service Commission, it is proper to examine other statutory provisions relating to the same subject matter. These statutes should be construed together, in *pari materia*, so as to give effect to all. (*Southern Ry. Co. v. SC State Highway Dept.*)

South Carolina Code Section 58–62, entitled ‘Duties of Attorney General with Respect to Commission’, directs the Attorney General to:

(1) Represent and appear for the people of the State and the Commission in all actions and proceedings involving any question of general and public interest within the jurisdiction of the Commission and, if directed to do so by the Commission, intervene, if possible, in any action or proceeding in which any such question is involved;

*3 (2) Commence, prosecute and expedite the final determination of all actions and proceedings directed or authorized by the Commission.

(3) Advise the Commission and each commissioner, when so requested, in regard to all matters connected with powers and duties of the Commission and the members thereof; and

(4) Generally perform all duties and service as attorney to the Commission which the Commission may require of him.

Code Section 1–238, relating to the duties of the Attorney General, provides that he ‘shall, when required by the . . . Public Service Commission, consult and advise with [the Commission] on questions of law relating to [its] official business.’

The General State Appropriations Act for 1975–76, enacted June 4, 1975, subsequent to enactment of the Ethics Act, in Section 10 directs the Attorney General to ‘assign and physically locate at least one of his assistants as counsel to perform necessary legal work’ at the Public Service Commission. Section 69 of the Appropriations Act, which provides funds for the Commission, budgets four Assistant Attorneys General who are ‘appointed by and subject to the Attorney General and shall be assigned to the Commission.’

Consideration of the above-referenced statutes together with Section 18 of the Ethics Act demonstrates that the Ethics Act in no way diminishes the Attorney General's statutory authority to represent and appear before the Commission in behalf of the people of the State and the Commission. Section 18 should not be construed as impliedly repealing these statutes unless no other reasonable construction can be applied. (*State Ex Rel McLeod v. Ellisor*)

Furthermore, however plain the ordinary meaning of words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended, or would defeat the plain legislative intent. If possible the courts will construe the statute so as to escape absurdity and carry the intention into effect. (*State v. Montgomery*)

A literal construction of Section 18 would have an effect incongruous under an Act intended to prohibit use of official status for personal gain, in that such a construction would bar the state's chief legal officer and his assistants from appearing in the public interest before the Commission in rate setting matters.

Common Law Powers of the Attorney General. The office of South Carolina Attorney General, first established in 1696, is possessed of a broad range of common law powers in addition to those bestowed by statute. (State v. Broad River Power Co.; Cooley v. SC Tax Comm'n; Ruling Case Law 916; 6 Corpus Juris 809–810) The authority of the Attorney General to appear before a regulatory commission in the public interest would seem to be a function of the office's common law powers in addition to the specific statutory authorities. The common law power of a state attorney general to intervene in public utility rate cases has been specifically upheld in several states. (State Ex Rel Olsen v. Public Service Comm'n; Alexander v. NJ Power and Light Co.; and State Ex Rel Shevin v. Yarborough) The New Jersey court, in upholding that state's attorney general's power to intervene before a regulatory commission in a public utility rate case stated that:

*4 The Attorney General has traditionally been recognized as the defender of the public interest. This power is an attribute of his office, bestowed by the common law, which has not been taken away by legislative enactment. (Petition of Public Services Transport)

South Carolina Code Section 1–19 provides that the common law of England is to continue in effect unless altered by the Code or inconsistent with the State Constitution. The State Supreme Court has sustained the analogous rule of construction that statutes in derogation of common law are to be strictly construed and not extended in application beyond the clear legislative intent. (Crowder v. Carroll) There appears no indication that the General Assembly clearly intended Section 18 of the Ethics Act to diminish the common law powers of the Attorney General to represent in courts and tribunals the public interest.

CONCLUSION:

There is no clear indication that the General Assembly intended § 18 of the Ethics Act to diminish the Attorney General's statutory and common law power to represent the public interest by appearing before the Public Service Commission in rate setting matters. The construction of § 18 which carries out the intent of the Ethics Act, avoids absurdity and harmonizes with other statutory and common law authorities would enable the Attorney General and his assistants to continue to appear before the Public Service Commission in rate setting matters in the public interest as advocate of the public's consumer interests and/or as legal counsel to the Commission.

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