

1975 S.C. Op. Atty. Gen. 240 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4185, 1975 WL 22480

Office of the Attorney General

State of South Carolina

Opinion No. 4185

November 19, 1975

***1** (1) Teaching personnel and officials of academic rank in State supported institutions of higher learning may count the time spent as an instructor as creditable service in determining his or her bonus annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act.

(2) A State legislator may not count the time served in the legislature as creditable service in determining his or her annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act.

TO: Jack S. Mullins, Ph.D.

Director

State Personnel Division

QUESTIONS PRESENTED:

(1) Whether teaching personnel and officials of academic rank in State supported institutions of higher learning may count the time spent as an instructor as creditable service in determining his or her bonus annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act?

(2) Whether a State legislator may count the time served in the legislature as creditable service in determining his or her annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act?

STATUTES, CASES, ETC., INVOLVED:

Act No. 997, Statutes at Large of South Carolina, 1974 (§ 1–91.8, et seq., Code of Laws of South Carolina, as amended).

Act No. 800, Statutes at Large of South Carolina, 1966.

[Ridgill v. Clarendon County](#), 188 S.C. 460, 199 S.E. 683.

Plan of Administration for the State of South Carolina Classification and Compensation Plan, Approved by the State Budget and Control Board June 17, 1975.

67 C.J.S. Officers § 83, p. 319.

DISCUSSION OF THE ISSUES:

Act No. 997 of 1974 provides for annual leave for State employees. § 1 of the Act provides as follows:

The provisions of this Act shall apply to all state agencies, departments and institutions and shall be administered by each such agency, department and institution pursuant to regulations adopted by the State Budget and Control Board. The Act, however, shall not apply to teaching personnel and officials of academic rank at state-supported institutions of higher learning.

§ 2 of the Act specifically entitled any permanent State employee to annual leave with pay. § 6 authorizes leave based upon a five-day work week except where services are maintained seven days a week. It further states that:

The State Budget and Control Board, through the State Personnel Division, may establish, by appropriate regulations, procedures for the equitable calculations of leave for those employees who work a different number of days including permanent part-time employees.

The regulations of the State Budget and Control Board specifically define eligibility for annual leave in § 1–2 as follows: Annual leave shall be accrued by and granted to: (a) permanent full-time employees, and (b) permanent part-time employees. . . .

***2** There is no question that a University faculty member is a permanent State employee. The Act specifically provides that such a person will not receive the benefits of the Annual Leave Act. Presumably, this is because such faculty members receive other free time and vacation time and therefore annual leave is not required.

The ‘Annual Leave Act’ does not apply to a State employee who is of academic rank at a State-supported institution of higher learning. Nevertheless, the University of South Carolina is a State institution and the Act does provide for full credit to all employees transferring from one agency to another with no break in service as far as annual leave benefits are concerned. The credit is both as to bonus earnings and actual annual leave balance. While an employee from a State-supported institution of higher education would not be allowed to carry any balance of annual leave, his time and service should be transferred so far as it applies to computing bonus earnings.

However, a former member of the legislature who goes to work for a State agency presents another situation. A member of the legislature in no way meets the requirements of a permanent employee of this State. Further, the legislature has the absolute power to provide for any annual leave or other benefits for its members and has not chosen to provide for annual leave benefits. On the other hand, it has specifically provided a retirement program (Act No. 800, Statutes at Large of South Carolina, 1966).

It has been held in this State that a position is a public office when it is ‘created by law, with duties cast upon the incumbent which involve an exercise of some portion of sovereign power, and in the performance of which the public is concerned, and which also are continuing in their nature, and not occasional or intermittent; while a public employment, on the other hand, is a position which lacks one or more of the fore-going elements.’ [State ex rel Williamson v. Wannamaker](#), 213 S.C. 1, 48 S.E.2d 601.

A legislator is an officer of the State and would only receive the compensation and emoluments as provided by the legislature. [Ridgill v. Clarendon County, et al.](#), 188 S.C. 460, 199 S.E. 683. In the absence of a statutory provision for annual leave it appears that none exists.

CONCLUSION:

It is the conclusion of this office that:

(1) Teaching personnel and officials of academic rank in State supported institutions of higher learning may count the time spent as an instructor as creditable service in determining his or her bonus annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act.

(2) A State legislator may not count the time served in the legislature as creditable service in determining his or her annual leave earning rate in a later assignment in which the employee is eligible for annual leave under the Act.

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