

1974 WL 28095 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1974

\*1 Dr. Jack S. Mullins  
Director  
State Personnel Division  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Dr. Mullins:

Your letter of March 7, 1974, addressed to the Attorney General has been referred to me for reply. In that letter you request that this Office advise you whether or not the School for the Deaf, Blind, and Asphasic, can require their employees to accept payment for earned annual leave at the end of the school year instead of allowing the employees to carry over unused annual leave into the following-year.

The Annual Leave Act is found in Sections 1-91.1, et seq., of the Code of Laws of South Carolina. Section 1-91.2 provides in relevant parts that 'no employee shall be required to use all of his annual leave in any one year. Any unused annual leave may be accumulated not to exceed 45 days.' The law, as quoted above, in regard to the accumulation of earned annual leave is, in my opinion, crystal clear. It provides that an employee may accumulate annual leave up to 45 days and further that the employee shall not be required to use all of his annual leave in any one year.

The procedure described in your letter which is currently being followed by the School for the Deaf, Blind, and Asphasic is clearly in violation of the terms of Section 1-91.2 of the Code of Laws of South Carolina, inasmuch as it requires an employee to use all of his annual leave in any one year by requiring the employee to accept a lump sum payment for unused leave at the end of his employment year.

By the same token, the law is silent on whether or not an agency can permit an employee, if the employee so desires, to accept a lump sum payment for unused annual leave at the end of his employment year. In this regard, it is my feeling that if the agency wishes to allow the employee to accept a lump sum payment for unused leave at the end of each year rather than having the leave carried over and accumulated into the following year it may do so, but in no event shall the agency require that the employee take a lump sum payment for unused annual leave at the end of the year.

You additionally note in your letter that it is a prevalent practice among State agencies to require an employee to exhaust all earned annual leave prior to placing an employee in a status of leave without pay. Apparently, this problem becomes important where the employees concerned only work nine months a year. As I understand it, it is a common practice among agencies which employ nine-month employees to put them in the status of leave without pay during the three months hiatus prior to their next employment period. Requiring an employee in this category to use all of his annual leave prior to placing him on leave without pay during the three-month break is apparently in conflict with the relevant provisions of Section 1-91.2 of the Code of Laws of South Carolina, since under that section an employee may accumulate annual leave and the agency may not require the employee to use all of his annual leave in any one year.

\*2 I hope that the foregoing sufficiently answers the questions which you posed in your letter of March 7th. If you require additional information, please do not hesitate to call upon me.

Yours very truly,

Ellison D. Smith, IV  
Assistant Attorney General

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