

1974 WL 28053 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 11, 1974

*1 Mr. Carlos Gibbons
Office of Minority Business Enterprise
Division of Administration
Edgar A. Brown State Office Building
Columbia, South Carolina 29201

Dear Mr. Gibbons:

Thank you for your letter of March 13, 1974, concerning whether or not you may take a leave of absence from your job in order to run for State Superintendent. At the present time there is no provision promulgated by statute or regulation for leave without pay except in certain cases such as maternity leave, education leave, and as a type of disciplinary procedure.

An individual state agency, however, may promulgate its own guidelines which control an employee of that agency. In this regard you have referred us to an Inter-Office Memorandum dated November 19, 1973, from Orson Bone which provides revised pages for an Administrative Manual for your agency. Page GI-14 states in part

5. Leave Without Pay

- a. Leave without pay should be granted only when all other appropriate leave has been used.
- b. Length of Leave Period—No leave may be granted for a period in excess of twelve months.

I have talked to Mr. Bone and he states that the intent of this section was to establish a provision providing a maximum time limit allowable for leave without pay. It was not anticipated or intended that this section would be used as a procedure for taking leave without pay at the discretion of the employee. As the question you have asked would be governed by the agency employing you, and as this agency states it was not the intent of its policy to allow leave without pay except in specific situations—you would not be able to take a leave without pay to run for office. However, it should be pointed out that the validity of this rule itself is subject to some doubt as it is an attempt to establish a rule in an area that is within the legislative authority of the State. And, by providing a twelve (12) months maximum period for leave without pay the agency rule vastly exceeds any State legislation in this area.

No South Carolina law would prohibit a candidate from maintaining his employment during the course of his candidacy. If a personnel policy prohibiting such a situation has not been promulgated by your agency, then you can run for office and also retain your employment. An additional caveat is if you are paid in whole or in part by federal funds or if your job is related to an activity which receives federal funds you would be subject to the Hatch Act and determinations of permissible activities must be made by the Office of General Counsel of the United States Civil Service Commission, Washington, D. C.

Sincerely,

Treva Ashworth
Staff Attorney

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