

1974 WL 27218 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1974

***1 RE: Grievance Procedures**

South Carolina Commission for the Blind
P. O. Box 11638
Columbia, S. C. 29211

Dear Board Members:

By letter of August 27, 1974, you pose the following questions:

1. May the South Carolina Commission for the Blind legally utilize a qualified person, other than a Board member or member of the Commission's staff, to conduct appellate hearings on behalf of the Commission?
2. May an employee grievance appeal be conducted by less than a quorum of the Board?

In considering these questions it is initially necessary to outline the two categories of grievance procedures with which the Commission is involved. See 1973 Attny. Gen. Opn. No 3487, copy enclosed. The first such category concerns persons who are clients of the Commission, such as vending stand operators or visually handicapped persons applying for assistance. The grievance procedures pertaining to these persons are specified by S. C. Code § 71-299. Section 71-299 provides:

Every person aggrieved by an action of the Commission shall be granted, upon request, a hearing before a hearing officer assigned by the Commission. . . . An appeal may be taken from the decision of the hearing officer to the Commission for the Blind. The Commission shall hold a hearing on the matter which shall be attended by at least three members. An appeal may be taken from the decision of the Commission to the court of common pleas. . . .

In grievance proceedings brought under this statute the Commission may 'assign', i.e., appoint or designate, either a Board member, a staff member, or some outside party to serve as a hearing officer. However, if the hearing officer so assigned should be a Board member, that member could not lawfully sit on any appeals panel in any appellate proceeding arising from a matter which that Board member had decided.

The second category of grievance procedures with which the Commission is involved pertains not to clients, but rather to Commission employees. Procedures for handling employee grievances are dictated by the State Employee Grievance Procedure Act, S. C. Code §§ 1-49.11 to 49.14, as implemented through the Commission's 'Employee Grievance and Appeal Procedure' guidelines. Under the guidelines, Step 3 of the employee grievance appeal procedure as now written would appear to require that an appeal is to be addressed to the entire Board. Therefore, it is to be presumed that a quorum would be required to conduct this formal business of the Board. I hasten to note, however, that with the approval of the State Personnel Director the Board may lawfully amend its procedures in handling employee grievances. See S. C. Code § 1-49.12. Accordingly, the Board is free to request of the State Personnel Director any changes which it feels are desirable, including changes relating to the utilization of single hearing officers who are other than members of the Board or the Commission's staff.

*2 In summary, when dealing with its clients, the Commission is bound to follow the procedures of S. C. Code § 71-299. When dealing with its employees, the Commission may follow those procedures which it adopts and the State Personnel Director approves.

Very truly yours,

John B. Grimball
Assistant Attorney General

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