

1973 S.C. Op. Atty. Gen. 133 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3520, 1973 WL 20980

Office of the Attorney General

State of South Carolina

Opinion No. 3520

May 7, 1973

*1 Mr. Harry J. Haynsworth
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Columbia, South Carolina 29208

Dear Mr. Haynsworth:

In connection with the dismissal of Dr. Fred L. Crawford as Executive Director of the South Carolina Commission for the Blind, you have posed the following questions:

1. Is Dr. Crawford entitled to a grievance hearing under § 1–49.11, et seq., of the South Carolina Code? This section states that ‘permanent state employees’ are entitled to such hearings, which I assume means Civil Service type employees and not executives like Dr. Crawford, but the section does not define this term.

As noted by you, Section 1–49.11 of the Code of Laws does not define ‘permanent state employee’, nor does the Act contain any specific exemptions with respect to its scope. The Director is undoubtedly a ‘state employee’ within the meaning of many of the statutes conferring benefits upon such employees; for example, Workmen's Compensation law, the State Retirement System, and the annual leave provisions affecting State employees, some of which contain definitions which make them distinguishable. The General Assembly has, however, made no specific exemptions of executives who are appointed or elected by action of a body such as the Commission for the Blind, and I do not find within the law a sufficient basis upon which an exemptive status can be founded. Section 71–291 provides that ‘the Commission shall appoint a Director and such other officers as it deems necessary, —’ and a most persuasive argument exists in the contention that the State Employees Grievance Procedure Act of 1971 did not have the effect of subjecting the appointive discretion of the Commission of the Blind to the critique procedures of the State Employee Grievance Committee. It is my belief, however, that the Grievance Procedure Act should be liberally construed and any doubt which I have has been resolved in favor of the inclusion of officials such as the Director of the Commission for the Blind. Discussion with persons familiar with the origin of the Grievance Committee Act, as well as a survey of the minutes of the Committee of the Legislature which authorized its drafting, indicates to me that this problem was not given any consideration during the passage of the Act, and if any exemptive provisions are to be added to the Act, it is my view that they should be added by the Legislature, and not made by construction of the law except as a court may undertake to do so.

2. Is Dr. Crawford eligible for a grievance hearing under § 71–299 of the South Carolina Code, which sets forth the procedure for certain persons to appeal from decisions of the Commission for the Blind?

No. The basis for this conclusion is set forth in an enclosed opinion previously issued. (Opinion issued by Hubbard W. McDonald, Jr., Assistant Attorney General, dated March 9, 1973, directed to Mrs. Onnie Barham, Member, South Carolina Commission for the Blind.)

*2 3. If Dr. Crawford is eligible for a hearing under either statute, what types of relief would he be entitled to if his position were sustained?

In my opinion, the action which the State Employee Grievance Committee or the State Budget and Control Board may undertake is advisory only and has no mandatory effect. Section 1-49.13 does provide that the findings of the Committee shall be 'final' unless the State Budget and Control Board rejects this decision. This, in my opinion, relates to the finality of the procedure for review provided by the Act and means nothing more than that the determination of the Committee is beyond change except by action of the Budget and Control Board. The administrative practice in the past has been to couch decisions of the Committee and of the State Budget and Control Board in language which constitutes a recommendation only. Additionally, where the Legislature has meant to grant specific authority to implement the findings of an administrative body, it has done so specifically. See Section 1-360.27 relating to the Commission on Human Affairs which specifically authorizes the reinstatement, hiring, or upgrading of employees when cause therefor has been found by that Commission. There is no such authority granted in the State Employees Grievance Procedure Act. See, also, Section 2208(c), Rules of S. C. Employment Security Commission, which provides:

—'the Merit System Council's decision in the case of dismissal for cause shall be binding on the Commission—.'

You ask additionally:

4. Can any action passed by a board or commission be collaterally attacked on the grounds that one or more of the members should have resigned for any reason prior to the time of the vote on the action in question?

No. As long as the members of the Commission are qualified and serving in that capacity, they have the full authority to act and, in my opinion, their decisions may not be collaterally attacked on the grounds referred to by you.

Very truly yours,

Daniel R. McLeod
Attorney General

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