

MINUTES OF BUDGET AND CONTROL BOARD MEETING

FEBRUARY 1 1973

The State Budget and Control Board met in a special session in the Conference Room of the Governor's Office at 10:30 a. m. on February 1, 1973, for the purpose of hearing a further presentation and discussion with respect to the retirement status of Mr. Ralph Durham of the South Carolina Department of Education.

Board members in attendance were:

Governor John C. West  
Mr. R. J. Aycock  
Mr. Grady L. Patterson, Jr.  
Mr. Henry Mills

Senator Rembert C. Dennis appeared at the beginning of the meeting but advised that he was needed in the Senate. He left promptly to attend senatorial duties.

Also in attendance were Messrs. P. C. Smith, W. T. Putnam, Tatum Gressette, Purvis Collins and Ralph Durham.

As the meeting was specifically called to hear a personnel matter, the Board unanimously voted to declare itself in Executive Session.

RALPH DURHAM - RETIREMENT STATUS - Through questioning the various individuals involved in the hearing, the following series of events were found to have occurred.

Until 1958, Mr. Ralph Durham was employed by the Education Finance Commission, but at that time left the employment of the State to attend to personal business affairs. In 1963 he reached the retirement age of sixty (60) and began drawing benefits under the South Carolina Retirement Act. Subsequently, Mr. Durham was approached by officials of the South Carolina Department of Education and asked to return as an

employee of that organization. On July 1, 1965, he returned to full time State employment.

Since returning to full time service with the State of South Carolina, Mr. Durham has continued to draw retirement benefits until he received \$2,400 in any particular year. At that time, his retirement benefits were terminated for the balance of the year.

The employee has requested that he be reinstated under the State Retirement Program and permitted to pay any retirement which might have accrued since he returned to State employment. He further requests that he later be permitted to retire with newly determined retirement benefits as prescribed by law.

At its regular meeting of July 18, 1972, the Budget and Control Board agreed that Mr. Durham should be reinstated as a full time employee and that all employee benefits should be made available to him in his present status. However, at that time, the Board noted that Mr. Tatum Gressette should be afforded an opportunity to offer any objections which he might have to this ruling. His current appearance is in answer to that offer.

Mr. Tatum Gressette spoke on behalf of the Retirement System and stated opposition to the Board's decision. He based his argument upon the fact that the South Carolina Retirement Act provides for only two conditions under which a retired employee might return to State service. One condition is that of a consultant, while the other provides for temporary employment with total income not exceeding \$2,400 during the year. In addition, Mr. Gressette produced a copy of a 1949 ruling of the State Retirement Board which stated, in part:

"Upon the recommendation of the Executive Secretary, the Board adopted the following policy with regard to retirants who return to employment with an employer under the Retirement Act after starting to draw retirement benefits:

"In the event a retirant returns to employment of an employer under the Act all benefit payments shall immediately cease and terminate during the term of employment, and will be resumed at the same rate and in the same manner as when the retirant first retired and that no further contributions shall be required while the retirant is employed."

Mr. Gressette made the point that if the Budget and Control Board rule permitting Mr. Durham to return to covered employment were extended to other retirees, many could immediately return and work for a relatively short period of time simply to have their retirement benefits recomputed. He pointed out that the situation could be further complicated where an employee had originally selected a retirement plan covering a spouse who might now be deceased.

In a subsequent discussion Board members recalled that their original ruling concerning this case was based upon the fact that no specific prohibition existed against a person returning to covered employment. Also, Section 61-32 of the South Carolina Code of Laws provides that all employees must be members of the System. (The two exceptions of this provision are not applicable in the present case.)

After much discussion, the Board members agreed that Mr. Ralph Durham should be returned to covered employment and should receive all benefits as a State Employee. However, the Board shared Mr. Gressette's concern that an extension of this privilege to other retirees might result in a great deal of abuse. Therefore, it was felt that legislation should be recommended to provide for equitable treatment of individuals such as Mr. Durham who might legitimately return to State employment for an extended period of time, but would also protect the System from retirees who might wish to abuse their privilege.

A motion by Mr. Grady L. Patterson was unanimously approved, by the members present, directing Mr. Purvis Collins to draft proposed legislation which would provide for equitable treatment for individuals

such as Mr. Durham, but would contain protective clauses against abuse, and to present this proposal to the Board for its approval.

CIVIL CONTINGENT FUND - The Board approved expenditures from the Civil Contingent Fund as follows:

(1) A payment to Mr. Harry M. Lightsey, Jr., in the amount of \$358.26 for preparation and printing of briefs pertaining to reapportionment.

(2) Expenses of the Legislative Committee on No Fault Insurance.

There being no further business, the meeting was adjourned at 11:30 a. m.

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