8192 Library

HENRY MCMASTER
ATTORNEY GENERAL

July 17, 2006

The Honorable Ronnie Cromer
Senator, District No. 18
P. O. Box 378
Prosperity, South Carolina 29127

Dear Senator Cromer:

In a letter to this office you requested an opinion regarding the interpretation of S.C. Code Ann. § 23-1-225 which states:

> [u]pon retirement, state law enforcement officers may retain their commissions in retired status with all rights and privileges, including the right to retain their service weapons issued while serving in active duty status.

You indicated that the Department of Public Safety is implementing their own interpretation of Section 23-1-225 which, according to your letter, does not comply with such provision.

A prior opinion of this office dated June 6, 2002, a copy of which is enclosed, dealt with the question of whether Section 23-1-225 allowed retired state law enforcement officers to retain law enforcement authority. The opinion concluded that an individual must be employed by a state or local law enforcement agency in order to maintain law enforcement authority. The opinion stated that

> ...the rights and privileges of a commission in retired status would not include law enforcement authority and a state agency...would not be granting the retiree law enforcement authority simply by allowing him or her to retain the commission.

It is my understanding that the individuals who prompted your question are not seeking to maintain any specific law enforcement authority when retaining their commissions in retired status.

It is also my understanding that the commission held presently by the individuals in retired status in the situation that prompted your question is a constable's commission associated with the Department of Public Safety.

Request Letter

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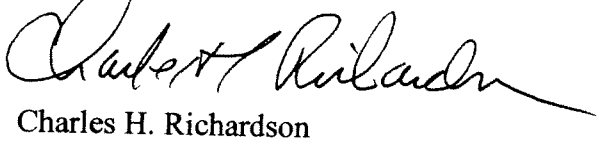
When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). The term "retain" as used in Section 23-1-225 is defined by Black's Law Dictionary, rev. 4th Edition, as "to continue to hold, have, use, recognize, etc., and to keep."

Referencing the plain and ordinary meaning of "retain", in my opinion, Section 23-1-225 should be construed to indicate that state law enforcement officers should continue to hold the commissions in retired status they had at the time of their retirement. For instance, if the retired officer formerly had a commission as a state highway trooper, then that individual would maintain that same commission in a retired status. However, while these individuals would be authorized to keep the service weapons issued to them while in active duty, they would not be considered regular law enforcement officers with full law enforcement authority.

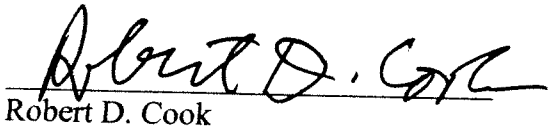
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General