



HENRY McMASTER
ATTORNEY GENERAL

October 27, 2008

The Honorable Glenn G. Reese
Senator, District No. 11
507 Fagin Drive
Lake Bowen
Inman, South Carolina 29349-7000

Dear Senator Reese:

In a letter forwarded to this office you indicated that full time magistrates periodically have to do National Guard or Army Reserve duty and training for a brief period of time. You have questioned whether if this training involves a consecutive period of four to ten weeks, do these magistrates still draw full-time pay while they are absent from work, especially if they are not taking vacation time.

S.C. Code Ann. § 8-7-90 as last amended by Act No. 353 of 2008 states that

[a]ll officers and employees of this State or a political subdivision of this State who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days in any one year during which they may engage in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and state holidays may not be included in the fifteen-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled work day for the officer or employee involved. In the event any such person is called upon to serve during an emergency he is entitled to such leave of absence for not exceeding thirty additional days.

A state employee in a full time position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to thirty additional days of military leave in any one year.

As used in this section, "in any one year" means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders. The provisions of this section must be construed liberally to encourage and allow full participation in all aspects of the National Guard and reserve programs of the Armed Forces of the United States and to allow state officers and employees who are enlisted or commissioned members of the National Guard or reserve components to excel in military and emergency preparedness and service by taking full advantage of all career-enhancing assignments and training opportunities. (emphasis added).

In the opinion of this office, such provision would be applicable to magistrates inasmuch as magistrates are considered county officers. See, e.g., Ops. Atty. Gen. dated July 26, 1989; February 4, 1980; April 18, 1979. See also: S.C. Code Ann. § 14-7-820 ("no...magistrate or other county officer...is eligible as a juryman in any civil or criminal case..."). Moreover, 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).

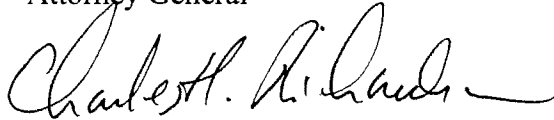
Consistent with the above, in the opinion of this office, inasmuch as a magistrate is a county officer, pursuant to Section 8-7-90, he or she would be entitled to a leave of absence from his or her respective duties as magistrate without loss of pay or time "...for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days in any one year during which they may engage in training or any other duties" as provided in such statute. Also, pursuant to a further provision, in circumstances where the magistrate is called to serve during an emergency, he or she would be entitled a leave of absence for a period not exceeding thirty additional days.

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If there are any questions, please advise.

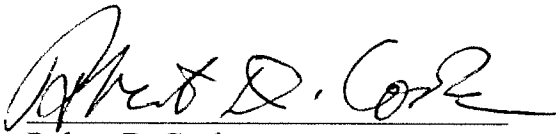
Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in cursive script, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "Robert D. Cook", with a horizontal line drawn underneath the signature.

Robert D. Cook
Deputy Attorney General