

6811 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

October 7, 1999

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Gentlemen:

By your letter of September 30, 1999, you have asked whether the Presidential Selected Reserve Call-up in support of Operation Southern Watch constitutes an emergency under S.C. Code Ann. § 8-7-90 so as to allow those employees of the State and its political subdivisions who have been involuntarily activated for this mission thirty additional days of paid military leave.

As you know, leaves of absence are authorized for public officers and employees in the National Guard or reserve military forces by S.C. Code Ann. §8-7-90, which provides in pertinent part:

All 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

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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.*** (Emphasis added).

The statute further states that the provisions of §8-7-90 are to 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 further to allow state officers and employees in such programs to take advantage of career-enhancing assignments and training opportunities and to excel in military preparedness and service.

Several principles of statutory construction are relevant here. The primary objective of both the courts and this Office in construing statutes is to determine and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings, unless there is something in the statute requiring a different interpretation. Laird v. Nationwide Insurance Co., 243 S.C. 388, 134 S.E.2d 206 (1964). Resort should not be had to a subtle or forced construction to either limit or extend the operation of the statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Where the terms of a statute are clear and unambiguous, the courts and this Office must apply them according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976).

In response to a similar question involving the deployment of U.S. military forces to the Middle East during the early stages of Operation Desert Shield, Attorney General Medlock concluded:

If the President calls up Guardsmen or Reservists to the Mid-East using his emergency powers, clearly § 8-7-90 would apply. If he uses his non-emergency powers, State law would control. The South Carolina Supreme Court has used Webster's New International Dictionary to define "emergency" as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency." Hice v. Dobson Lumber Co., 180 S.C. 259, 185 S.E. 742 (1936). In addition, this Office has cited that language in an opinion to define an emergency under South Carolina law. Op. Atty. Gen. #83-92 (Dec. 5, 1983). ***Moreover, § 8-7-90 mandates a liberal construction of its provisions. In that light, a South Carolina court would most probably find that § 8-7-90 applies to State employees called up by the President during the current Mid-East situation to entitle them to a leave of absence for not exceeding thirty (30) days.*** (Emphasis added). Op. Atty. Gen. #90-49 (Aug. 22, 1990).

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According to the facts presented in your letter, as well as those provided by Lieutenant Colonel David Anderson, the Commander of Task Force 151, participants in Operation Southern Watch are, among other things, assisting active duty military forces in the enforcement of the Iraqi "no-fly" zone and are drawing hazardous duty pay. Without question, an involuntary Presidential Call-up to meet such exigencies would constitute an emergency under South Carolina law. Accordingly, it is the opinion of this Office that § 8-7-90 applies to employees of the State and its political subdivisions who have been called-up in support of Operation Southern Watch, thus entitling them to thirty additional days of paid military leave.

Thank you for your letter. I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of further assistance.

With best wishes, I am

Sincerely yours,



Zeb C. Williams, III  
Deputy Attorney General

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