



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 28, 1998

Barry D. Mallek, Chief of Police  
Town of Duncan  
Police Department  
Post Office Drawer 188  
Duncan, South Carolina 29334

In Re: **Informal Opinion**

Dear Chief Mallek:

You are seeking an opinion "to further clarify the law and intent of S. C. Code of Laws Section 23-6-405." By way of background, you have provided the following information:

[t]he Town of Duncan is in receipt of a letter and invoice from the Town of Chesnee for an officer we recently hired. That officer was hired by Chesnee in February 1998, was sent to the SC Criminal Justice Academy for "mandatory training" and successfully completed it. He then resigned his position with the Town of Chesnee on August 6, 1998. Clearly if those were the only circumstances we (Town of Duncan) would be obligated under the above statute. However, when the officer resigned so did seven other officers of the Chesnee Police Department including the Chief of Police. The reasons were intolerable working conditions and that all of those officers had reason to believe their jobs were in jeopardy and that termination was inevitable. The officer we hired resigned because of those (and only those) reasons. His resignation was not because of "greener pastures" (more money) which I believe was probably the intent of the law.

After resigning from Chesnee our officer went to work for a family member for a short period of time. The officer made no contact with the Town of Duncan seeking employment until after he had already quit Chesnee and was now working at his new job. The officer then approached us seeking employment.

The opinion I request from you is, under ANY circumstances does the one or two year rule apply as defined in section 23-6-405. At some point making someone work under intolerable working conditions could be construed as involuntary servitude and of course would not be fair or legal. Or, would the law be subject to review under individual circumstances.

#### Law/Analysis

Section 23-6-405 provides as follows:

Section 23-6-405. (A) For purposes of this section "governmental entity" means the State or any of its political subdivisions.

(B) After July 1, 1997, every governmental entity of this State intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required under this article must comply with the provisions of this section.

(C) If the law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State, and within two years from the date of satisfactory completion of the mandatory training, a subsequent hiring governmental entity shall reimburse the governmental entity with whom the law enforcement officer was employed at the time of attending the mandatory training:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is

hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(D) If the law enforcement officer is employed by more than one successive governmental entity within the two-year period after the date of satisfactory completion of the mandatory training, a governmental entity which reimbursed the governmental entity that employed the officer during the training period may obtain reimbursement from the successive governmental entity employer for:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(E) Under no circumstances shall the governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer be reimbursed for more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.

Chief Mallek

Page 4

September 28, 1998

A number of basic principles of statutory interpretation are relevant to your inquiry. First and foremost, is the long-recognized tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, it will be presumed that the General Assembly did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938), and thus, where terms of a statute are positive and unambiguous, exceptions not made by the Legislature cannot be read in by implication. Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

A review of § 23-6-405 reveals no specific exception covering the situation where a police officer leaves his current employment with one police agency out of frustration or dissatisfaction, and subsequently takes a job with another law enforcement agency within the prescribed time following a brief tenure in non-law enforcement employment. The statute expressly states that if the law enforcement officer satisfactorily completes his training while employed with one agency and "within two years from the date of satisfactory completion of mandatory training", the "subsequent hiring governmental entity shall reimburse the governmental entity within whom the law enforcement officer was employed at the time of the mandatory training" in the manner prescribed. The obvious purpose of the statute is to insure that the costs incurred for training the officer by one agency are reimbursed to that agency by the "subsequent hiring governmental entity." The reasons the officer left the first agency in a particular instance -- be it for more money, greater opportunities or dissatisfaction with the present job are simply not spoken to by the statute. Neither is there recognized an exception for an interruption of service. The statutory provision simply sets a mandatory period of time within which an officer's being hired by a second agency results in that agency's incurring costs of the training. In such instance, the training costs of such officer must be reimbursed to the first agency by the subsequent hiring entity.

In other words, only a court could create or read into the statute the type of exception of which you are referencing. While I sympathize with your situation, and there are obvious inequities in such an instance, only a court could find that the General Assembly did not intend to require reimbursement in your situation. This Office must, in other words, advise you that it finds no such exception in the express language of the statute and must conclude that the law should be applied as written, thus resulting in reimbursements by the second agency in the manner prescribed in the statute. In construing a statute, something not within the manifest intention of the Legislature, as gathered from the words used, cannot be read into the enactment. Laird v. Nationwide

Chief Mallek  
Page 5  
September 28, 1998

Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). Any other conclusion than the one expressed herein would result in this Office, by way of an advisory opinion, implying an exception to the statute which the General Assembly did not expressly write into the law. You may wish to seek legislative clarification addressing the type of situation which you reference.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph