

1984 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-21, 1984 WL 159829

Office of the Attorney General

State of South Carolina

Opinion No. 84-21

February 24, 1984

*1 Andrew Shealy
Chief of Police
City of Newberry
Post Office Box 157
Newberry, South Carolina 29108

Dear Chief Shealy:

By your letter of January 3, 1984, to Attorney General Medlock, you asked the following questions:

Can a reserve commission police officer be paid a salary, or receive any other type of compensation for his services rendered under a part-time status? If so, would the reserve officer have to complete the ten (10) week basic training course offered through the South Carolina Criminal Justice Academy?

Based upon the following discussion, it is the opinion of this Office that reserve police officers may not receive compensation for their services. It is therefore unnecessary to respond to your second inquiry.

Act No. 481, 1978 Acts and Joint Resolutions, provided for the appointment of reserve police officers, defined in Section 1 as 'persons given part-time police powers without being regularly assigned to full-time law enforcement duties.' That Act provided comprehensive treatment on the subject of reserve police officers and, as now codified in Chapter 28 of Title 23, Code of Laws of South Carolina (1983 Cum. Supp.), provided the only statutes on the subject. A careful reading of Section 23-28-10 *et seq.* of the Code reveals no provision for compensation of reserve police officers. Arguably, within its comprehensive treatment of the subject, the General Assembly could easily have authorized such compensation, but the General Assembly failed to do so. Thus, it may be implied that the General Assembly intended that reserve police officers not be compensated.¹

Common sense would appear to dictate that a municipality (or other political subdivision) would be authorized to pay its reserve police officers. [Section 5-7-110 of the Code](#), pertaining to municipal government, states: 'Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.'² (Emphasis added.) However, this statute does not expressly include reserve police officers among those officers who are to be compensated; it may be inferred that this omission is to be understood as an exclusion, 2A [Sutherland Statutory Construction](#) § 47.23; [Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1938), and thus, municipalities would not be authorized to fix salaries for or otherwise compensate reserve police officers.

The conclusion that reserve police officers, as public officers,³ are not to be compensated absent specific statutory authorization, is consistent with the general rule stated by the South Carolina Supreme Court in [Ridgill v. Clarendon County](#), 188 S.C. 460, 199 S.E. 683 (1938):

There also can be no doubt that where compensation is claimed for the performance of official duties the officer must be able to support his claim by pointing to some provision of law authorizing it, and the absence of any provision for compensation carries with it the implication that the services of the incumbent are to be rendered gratuitously.

*2 188 S.C. at 466, 199 S.E. at 686. See also 67 C.J.S. Officers § 219 and 63 Am.Jur.2d Public Officers and Employees § 361.

Section 23–23–10 et seq. of the Code provides for the training of regular law enforcement officers in this State. In particular, Section 23–23–40 provides that:

No law enforcement officer employed or appointed on or after January 1, 1972, by any public law enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of the State or any political subdivision thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article.

The term ‘law enforcement officer’ as used in such provision is defined by Section 23–23–10(d)(1) as an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State, and who possess[es], with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

(Emphasis added.) As is obvious, included in the definition of a regular law enforcement officer is a reference to compensation.⁴ If a law enforcement officer regularly receives compensation, he would be included within the category of those law enforcement officers required to undergo training prescribed by Section 23–23–40, supra, which is required of regular law enforcement officers generally and which differs from training required of reserve police officers pursuant to [Section 23–28–30 of the Code](#). Hence, if a police officer has received training pursuant to Section 23–23–40 and is compensated, he would not be considered a reserve police officer.⁵

In conclusion, it is the opinion of this Office that no statute authorizes the compensation, by salary or otherwise, of reserve police officers for services rendered. Because your first inquiry is answered negatively, it is unnecessary to respond to your second inquiry.

This opinion is concerned solely with compensation relative to reserve police officers and is not intended to address compensation relative to any other law enforcement officials. For contrast, we would note that the General Assembly has provided for compensation for SLED officers (see [Section 23–3–10 of the Code](#)), sheriffs and their deputies (see Sections 23–13–30, 23–13–250, and 23–19–10 et seq.), and State Troopers, formerly officers of the Highway Patrol (see Act No. 151, 1983 Acts and Joint Resolutions, § 121 of Part I). The conclusion reached in this opinion is not a statement of policy by the Attorney General. Efforts to clarify or rectify this situation should be directed to the General Assembly.

I trust that this discussion will satisfactorily respond to your inquiry. If you need additional clarification, please advise this Office.

Sincerely,

*3 Patricia D. Petway
Staff Attorney

Footnotes

- 1 A statute must be construed as written. Neither a court nor this Office may create a right (here, to compensation) not otherwise existing which does not appear explicitly or by necessary implication from other language within the statute. See, for example, [Wilson v. McNeal](#), 575 S.W.2d 802 (Mo. App. 1978) and [Missouri Public Service Company v. Platte-Clay Electric Cooperative, Inc.](#), 407 S.W.2d 883 (Mo. 1966).
- 2 This Office has interpreted the term ‘special officer’ in Opinion No. 2424, dated February 27, 1968. Even though the law has been amended subsequently pertaining to first auxiliary officers (by Act No. 687 of 1976) and then reserve officers (by Act No. 481 of 1978, repealing Act No. 687 of 1976), Opinion No. 2424 is not clearly erroneous and may still be considered valid as to ‘special officers.’

- 3 The Attorney General has concluded on numerous occasions that police officers are public officers. See, Ops. Atty. Gen. dated February 16, 1983, October 20, 1982, and January 2, 1980.
- 4 The contrast may be noted in comparison to the definition of ‘reserve police officer’ in Section 23–28–10(A) (Section 1 of Act No. 481), wherein a reference to compensation is omitted.
- 5 See Ops Atty. Gen. dated May 25, 1983, April 28, 1981, and March 24, 1981, for the distinction between reserve police officers and regular police officers who serve on less than full-time basis.
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