

1979 WL 42728 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1979

***1 RE: State Holidays**

Dr. Jack S. Mullins
Director
Budget and Control Board
State Personnel Division
Suite 333
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina

Dear Dr. Mullins:

You have addressed the following questions to this Office for an official opinion. The answers to the questions are set forth in seriatim as follows:

ONE: Must a state agency remain open on all non-national holidays if none of the employees of that agency elect to work on those holidays?

The answer to this question can be found by reading [Sections 8-11-10, 8-11-50, 8-11-650 and 53-5-10 of the 1976 South Carolina Code of Laws](#), as amended. [Section 8-11-10 of the Code](#) provides:

The departments of the State government except where seven day per week services are maintained, shall remain open from nine A.M. until five P.M. from Monday through Friday, both inclusive, except on holidays fixed by law. On Saturdays such departments may close at one P.M. Skeleton forces may be maintained on Saturday and so staggered that each employee shall work not less than one Saturday out of each month; provided, that the offices of the State Highway Department shall remain open from eight-thirty A.M. until five P.M. from Monday through Friday, both inclusive, except on holidays fixed by law and these offices need not be kept open on Saturdays, except as may be necessary to carry on essential work. (Emphasis added).

[Section 8-11-650 of the Code](#) provides:

Leave, as authorized by this article, shall be based upon a five-day workweek except where services are maintained seven days a week; provided, however, that no agency shall schedule a workweek of less than thirty-seven and one-half hours. The State Budget and Control Board, through the State Personnel Division, may establish, by appropriate regulations, procedures for the equitable calculation of leave for those employees who work a different number of days, including permanent part-time employees.

One rule of statutory construction is that statutes which relate to the same subject are to be regarded as in pari materia. 73 Am. Jur. 2d § 189 at 388. According to this rule, meaning will be given to all relevant statutes in order to uncover legislative intent. Another rule of statutory construction is that the latter expression of the Legislature supersedes a former expression. In applying these two rules of construction [Section 8-11-650 of the Code](#) provides for the length of a workweek for state agencies. The vitality that remains in [Section 8-11-10 of the Code](#) is that the departments of state government may not be open on legal

holidays. An agency head however, has the discretion to open his agency on a holiday, if he determines that a sufficient number of employees are available to perform the vital functions of that agency.

[Section 53-5-10 of the Code](#) lists the legal holidays to be recognized by State Government. The holidays are:

- *2 The first day of January,
- the fifteenth day of January,
- the nineteenth day of January,
- the third Monday in February,
- the tenth day of May,
- the third day of June,
- the fourth day of July,
- the first Monday in September,
- the eleventh day of November,
- National Thanksgiving Day,
- the twenty-fifth day of December, and
- the twenty-sixth day of December.

The Legislature expresses its intent by the words actually used in making a law. It has thus expressed its intent to make the above mentioned days legal holidays. Although another legal holiday was created by the 1978 amendment to [Section 53-5-10 of the Code](#), the Legislature did not intend to create another work-free day for state employees.^{a1} This intention is expressed in the following proviso in [Section 53-5-10](#):

Provided, however, that state employees shall be authorized one less than the total number of such holidays and each year every state employee, prior to the first day of January, shall disclaim one holiday, other than a nationally recognized holiday, in writing on a form provided by their employer.

Thus, in order to comply with the law, the agencies of state government may be closed on legal holidays, subject to the agency head opening the agency if the agency is sufficiently staffed; but state employees are authorized one less than the total number of non-nationally recognized holidays.

The right to claim a holiday is subject to [Section 8-11-50](#). [Section 8-11-50](#) states that public employees may be required to work on legal holidays. Such employees are paid for work on a holiday by compensatory time. [Section 8-11-50](#) provides:

A State employee, except an employee of an academic institution, who is required to work on a legal holiday shall be given compensatory time for the number of hours worked within ninety days of such holiday. An employee of an academic institution who is required to work on a legal holiday shall be given compensatory time for the number of hours worked at the convenience of the agency in which employed within one year from the date of the holiday. Employees who do not work a normal Monday through Friday workweek, and are thereby not scheduled to work on any such holiday mentioned in [§ 53-5-10](#), shall be allowed

to take compensatory time for the number of hours worked at the convenience of the employing agency within ninety days of such holiday.

While [Section 53-5-10 of the Code](#) has been recently amended, [Section 8-11-50](#) has not been changed by legislative amendment. Thus, as in prior years public employees may be required to work on holidays and receive compensatory time therefor.

TWO: May parts of agencies close while other parts remain open on legal holidays?

The answer to this is in the affirmative, so long as that partially closed agency is able to provide those services which must be provided for the public well-being on a daily basis.

THREE: May a state employee be forced not to work on a holiday on which the employee has elected to work?

*3 An employee cannot be ordered not to work on a holiday which he or she has disclaimed pursuant to [Section 53-5-10](#). Such employee must be permitted to work, since state employees are not authorized unlimited work-free time.^{aa2} Subject to the provisions for compensatory time, annual leave and sick leave, an employee who has disclaimed a holiday must remain at work on that holiday regardless of whether that agency is officially closed to the public (because too few employees have chosen to disclaim that holiday) or if that agency has been opened on that holiday by an agency head who has determined that the attendance of employees is high enough so that regular business can be conducted.

The laws concerning legal holidays fixed by [Section 53-5-10 of the Code](#) present problems of interpretation. Although the above opinions have been reached, I anticipate that the Legislature will review this situation in the light that until 1978 there was no doubt that state agencies were officially closed on legal holidays.

Sincerely,

Barbara J. Hamilton
State Attorney

Footnotes

[a1](#) This intention is also expressed by the fact that the state Senate did not pass an amendment offered by Senator Drummond which would permit state employees to celebrate holidays which fall on Saturdays, on the preceding Friday. 1978 Journal of the Senate, at 2078.

[aa2](#) See [Section 8-11-30 of the Code](#) which makes illegal both the receipt of unearned compensation and the issuance of unearned pay checks.

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