

1979 WL 52529 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 13, 1979

**Re: South Carolina Highway Patrol Weight Control Directive**

\*1 Captain Jack Timmerman  
Patrol

You have asked this office for an opinion regarding the constitutionality and legality of imposing weight limitation on Highway Patrol officers and have submitted two proposed directives for review and consideration.

Currently, no S.C. law exists which would preclude the Patrol from imposing minimum and maximum weight standards for its officers. The S.C. Human Affairs law and the Federal Equal Employment Opportunity Acts would tend to preclude the imposition of any standards which would have a disparate effect on a cognizable group, such as orientals, blacks, women, etc. A cursory examination of the weight standards seems to indicate considerable flexibility in terms of range and therefore does not seem to have this failing. It is noted, however, that the two charts differ in terms of the minimum heights and maximum heights for which weight limits are established. I think that it would be difficult to justify hiring a woman who is 4'10" and refusing to hire a man of the same height. Although I recognize that is unlikely that you will have many male applicants who are less than 5'4", nevertheless, it would seem wise to consider the possibility. Likewise, while there are not many women who are over 6' tall, it does seem too unlikely that sooner or later you will have a woman applicant who will exceed that height. An allowance should be made for them as well.

Most of the cases which support weight control directives from other law enforcement agencies have indicated that the basis of their support lay in medically demonstrable evidence that excess weight leads to stress, high blood pressure, and cardiovascular problems. The emphasis in both directives on appearance would seem to be somewhat misplaced in terms of gaining legal support in the courts. I suggest that you either emphasize the medical aspects more or the appearance aspect somewhat less. After all, there is no reason why a fat man has to have a bulging shirt. He may get around that problem simply by purchasing a larger shirt.

The use of simpler language is preferred in directives such as this, both from a legal sense and an aesthetic one. However, the comprehensiveness of your proposal probably outweighs the similar language in Captain Bardon's proposal. The ideal would be a synthesis of his language with your comprehensiveness.

Finally, while it is unsolicited, I cannot help but comment on what seems to me to be the desirability of having some kind of annual physical fitness test for all Highway Patrolmen to pass, especially those who are actively on patrol.

Before implementing any directive on weight control, I recommend that you check with Grady Bennett in the Personnel Office to make sure all of the administrative requirements are observed.

William L. Todd  
Staff Attorney

Reviewed & Approved:

Deputy Attorney General

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