

1977 S.C. Op. Atty. Gen. 280 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-354, 1977 WL 24693

Office of the Attorney General

State of South Carolina

Opinion No. 77-354

November 4, 1977

\*1 TO: Chief James O. Freeman, Jr.,  
Columbia Metropolitan Police

QUESTIONS PRESENTED:

- 1) Is it necessary for a member of the South Carolina National Guard to attend weekend drills, when such drills conflict with their regular civilian employment?
- 2) Can guardsmen attend drills on their days-off rather than during regular working hours?
- 3) Is the Airport required to pay members who attend weekend drills their regular wages while they attend drill?

DISCUSSION:

When an individual enlists in the National Guard, his enlistment contract requires him to attend one weekend of drill each month. This requirement is also imposed upon him by federal law. In this regard, [32 U. S. C. § 502\(a\)](#) provides:

Under regulations to be prescribed by the Secretary of the Army and the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

- (1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and
- (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises at least 15 days each year.

The applicable regulations which further define this requirement are Army Regulation 350-1 and National Guard Bureau Regulation 350-1. If a guardsman should refuse or neglect to attend drill, he is subject to discipline by court-martial and dismissal from the Guard. See, Sections 25-1-2520 and 25-1-2230, Code of Laws of South Carolina (1976). Section 21-1-2190 of the Code prohibits an employer or other person from discriminating against a guardsman because of his National Guard obligation—

A person who, either by himself or with another (a) wilfully deprives a member of the National Guard of South Carolina of his employment (b) prevents such member from being employed (c) obstructs or annoys a member or his employer in his trade, business or employment because he is such a member or (d) dissuades or attempts to dissuade any person from enlisting in such National Guard by threat of injury to him in his employment, trade or business shall be guilty of a misdemeanor and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not more than thirty days.

In this regard, it should, however, be noted that public employees are entitled to military leave only for fifteen days in each year.

Normally, an individual trains with his unit one weekend each month. However, some units have scheduled drill on Monday night. In case of emergency, an individual may be permitted by his unit commander to perform 'equivalent training' at times other than as scheduled for his unit. However, since the unit training schedules are usually prepared six months in advance, it should be possible for you to plan your employees work schedule around these training periods.

\*2 Section 22-1-2250, Code of Laws of South Carolina, 1976, provides:

Officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay, seniority or efficiency rating, when attending National Guard encampments or schools for training, under proper authority, and on all occasions when ordered to active duty, in the service of the State of South Carolina.

This Office has issued several opinions to the effect that this provision entitles an officer or an employee of the State or its subdivision to his or her full pay while on military leave regardless of the fact that he or she may receive additional compensation from their respective military unit. See, Opinion of Attorney General, dated September 12, 1977. While Section 25-1-2250 makes provision for active duty training, encampments, and training schools, Section 8-7-90 of the Code provides that an office or employee of the State or its political subdivision shall be entitled to a leave of absence from his employment 'without loss of pay, time or efficiency rating, for a period not exceeding fifteen days in any year during which they may be engaged in training or such other duties ordered by the Governor, the War Department . . .' This provision applies to any training without restriction to encampment, training school or active duty training. In an opinion dated October 6, 1976, this Office construed the fifteen day provision to mean 'calendar days' when the officer or employee is called to duty for fifteen consecutive calendar days, as is normally the case with summer camp. It was this Office's opinion that even though summer camp would encompass only ten working days, the public employee would not be entitled to further military leave with pay. However, if a public employee is ordered to fifteen non-consecutive work days of military duty in order to meet his minimum military commitment as required by federal law, then the employee would be entitled to fifteen work days of military leave. In conclusion, if the employee has been ordered to summer encampment or other military duty for fifteen consecutive calendar days, he would not be entitled to full pay for attending weekend drills.

#### CONCLUSION:

- 1) It is mandatory that a guardsman attend drill; a public employee is entitled to military leave from his employment for fifteen days each year;
- 2) Guardsmen normally must attend drill when it is scheduled for their unit; however, the National Guard provides some flexibility in unusual situations;
- 3) If a public employee has been ordered fifteen consecutive days of military duty (e.g., summer camp), he would not be entitled to military leave with pay when his weekend drill conflicts with his regular employment.

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