



ALAN WILSON
ATTORNEY GENERAL

May 3, 2023

Chief Christ Watts
City of Rock Hill Police Department
120 East Black St.
Rock Hill, SC 29730

Dear Chief Watts:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states:

On October 10, 2022, we hired [Service Member] for the position of a Class I Police Officer with our agency. During the hiring process, it was discovered that [Service Member] would be utilizing the Department of Defense SkillBridge Program which allows full-time military personnel to begin learning the skills in the career field they wish to pursue once separated from the military. [Service Member] was hired by our agency with the date of separation from the Army scheduled for June 2023.

After being hired, it was discovered that [Service Member] could not be paid by the City of Rock Hill due to the compensation he is receiving from the Army at this time.

We have also learned that [Service Member] cannot attend the South Carolina Criminal Justice Academy or begin any online training for the position of Police Officer I because, according to the S.C. Code § 23-23-10 (E)(1) the definition of a Law Enforcement Officer is, "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 possesses, with respect to those laws, the power to affect arrests for offenses committed or alleged to have been committed." Furthermore, the South Carolina Criminal Justice Academy requires a Basic Law Enforcement registrant be a full-time paid employee of a S.C. agency before attending any in-person or online training.

The South Carolina Criminal Justice Academy's ("SCCJA") General Counsel suggested we may want to seek the Attorney General's opinion on the matter of hiring and certifying a person who is still being paid full-time by the military, because due to the current wording of the State Law mentioned above, we have an employee who will have to wait eight months to begin any training to become a S.C. Certified Officer.

We are requesting a review of this law to possibly allow this employee and any others in the future to attend the South Carolina Criminal Justice Academy prior to completing the Skill Bridge Program.

Law/Analysis

It is this Office's opinion that a court would likely hold Title 23, Chapter 23 authorizes the South Carolina Criminal Justice Academy (the "Academy") to train those persons that meet the statutory definition of "law enforcement officer." S.C. Code § 23-23-10(E)(1). The Academy is required by statute to "provide facilities and training for all officers from state, county, and local law enforcement agencies and for other designated persons in the criminal justice system." S.C. Code § 23-23-20. "Law enforcement officer" is statutorily defined to mean:

[A]n 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 possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code § 23-23-10(E)(1) (emphasis added). An initial issue is whether the phrase "hired by and regularly on the payroll of the State or any of its political subdivisions" only modifies employee or also modifies "appointed officer." Because there are classifications of appointed officers that serve without pay, it appears the legislature did not intend the phrase "regularly on the payroll" to modify "appointed officer." See, e.g., S.C. Code § 23-1-60(B) ("All appointments of deputies, constables, security guards, and detectives appointed pursuant to this section without compensation expire sixty days after the expiration of the term of the Governor making the appointment."); S.C. Code Regs. 37-030 ("In addition to the definition required by law, a "reserve" officer is not paid by the agency for which the officer performs law enforcement duties."). Therefore, a court would likely construe section 23-23-10(E)(1) to permit the Academy to provide training to law enforcement officers that are either (1) appointed or (2) hired and regularly on the payroll of the State or its political subdivisions.

The next issue is whether the Academy is authorized to train a Department of Defense SkillBridge Program (“SkillBridge Program”) participant who is hired by a municipal police department, but is not on the department’s payroll. As described in your letter, the Department of Defense SkillBridge Program allows full-time military personnel to begin learning skills in civilian career paths. The Department of Defense website provides an overview of the program which states:

For industry partners SkillBridge is an opportunity to access and leverage the world’s most highly trained and motivated workforce at no cost. Service members participating in SkillBridge receive their military compensation and benefits, and industry partners provide the training and work experience.

...

Service members can be granted up to 180 days of permissive duty to focus solely on training full-time with approved industry partners after unit commander ... provides written authorization and approval. These industry partners offer real-world training and work experience in in-demand fields of work while having the opportunity to evaluate the service member’s suitability for the work.

Department of Defense, SkillBridge Program Overview (last visited 4/12/2023) <https://skillbridge.osd.mil/program-overview.htm>. It appears that while a service member participates in this program, he is prohibited from being regularly on the payroll of any employer other than the military. Although this restriction on compensation would prevent an “employee” from satisfying the requirements of S.C. Code § 23-23-10(E)(1), a service member who is “appointed” as an officer would still qualify as a law enforcement officer. The South Carolina Code permits a municipality to “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.” S.C. Code § 5-7-110 (emphasis added). Because municipal police officers are generally appointed, the plain language of S.C. Code § 23-23-10(E)(1) appears to permit the Academy to train a service member who is hired by a municipal police department through the SkillBridge Program.

This Office discussed the issues raised in your letter with the Academy in an effort to identify whether there are further statutes or regulations to consider. The Academy identified S.C. Code § 23-23-10(E)(1) as the sole statute of concern. While it is this Office’s opinion that the plain language of S.C. Code § 23-23-10(E)(1) does not prohibit SkillBridge participants who are hired in an appointed capacity from training with the Academy, legislative clarification may be warranted to address whether this was the General Assembly’s intent. See Kerr v. Richland

Mem'l Hosp., 383 S.C. 146,148, 678 S.E.2d 809, 811 (2009) (The primary rule of statutory construction is to “ascertain and give effect to the intent of the legislature.”).

Conclusion

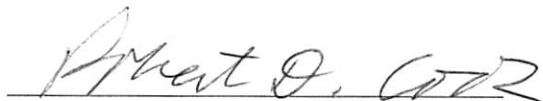
As is discussed more fully above, it is this Office’s opinion that the plain language of S.C. Code § 23-23-10(E)(1) does not prohibit SkillBridge participants who are hired by a municipal police department from training with the South Carolina Criminal Justice Academy. It appears that while a service member participates in the SkillBridge program, he is prohibited from being regularly on the payroll of any employer other than the military. Although this restriction on compensation would prevent an “employee” from satisfying the requirements of S.C. Code § 23-23-10(E)(1), a service member who is “appointed” as an officer would still qualify as a law enforcement officer.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General