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HENRY MCMASTER
ATTORNEY GENERAL

June 5, 2006

James K. Schweitzer, Director
South Carolina Department of Public Safety
10311 Wilson Boulevard
Blythewood, South Carolina 29016

Dear Mr. Schweitzer:

In a letter to this office you requested an opinion regarding recent legislation, R. 311, dealing with the State Law Enforcement Training Council (hereinafter "the Council"). Such legislation was vetoed by the Governor but the veto was overridden on May 30, 2006, the date considered to be the effective date for the legislation.

Pursuant to the provision to be codified as Section 23-23-10(D)

> ...all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and devolved upon the South Carolina Law Enforcement Training Council.

It is specifically provided by subsection (E)(2) of such provision that the term "council" for purposes of the legislation "...means the Law Enforcement Training Council created by this chapter."

Another provision, to be codified as Section 23-23-30(A), provides for an eleven member Council. Six of the members are ex officio members: the Attorney General, the Chief of SLED, the Director of the State Department of Probation, Parole and Pardon Services, the Director of the State Department of Corrections, the Director of the State Department of Natural Resources, and the Director of the State Department of Public Safety. The other five members are to be appointed by the Governor. Pursuant to subsection (B)(2), these five members are to begin serving on January 1, 2007. Subsection (C) of such provision states that "[t]his council shall meet for the first time within ninety days after January 1, 2007."

You have questioned when does the Council begin to function. You also asked whether the six ex officio members constitute the Council until January 1, 2007 when the remaining members are appointed by the Governor and whether these six ex officio members can lawfully meet prior to January 1, 2007.

Request Letter

In reviewing your questions, certain principles of statutory construction are relevant. Generally, a court will reject the meaning of the words of a statute which will lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928). In other words, in construing a statute, absurd results are to be avoided and a construction of the statute must be rejected when to accept it would lead to a result so plainly absurd that it possibly could not have been intended. State ex re. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Moreover, while the plain meaning and literal language rule normally is applicable, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948); Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must also be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948).

Statutes dealing with the same subject matter must be reconciled, if possible. Bell v. S.C. State Hwy. Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Therefore, statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Fishburne et al. v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). As a result, statutes in apparent conflict which address the similar subject matter must be read together and reconciled if possible so as to give meaning to each. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984). In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979).

Consistent with the above, as to your first question regarding when does the Council begin to function, as stated previously, the law became effective on May 30, 2006. On that day, "all functions, duties, responsibilities, accounts and authority statutorily exercised by" the Criminal Justice Academy was "transferred to and devolved upon" the Council authorized by the legislation, which is, as described in subsection (E)(2), "...the Law Enforcement Training Council created by this chapter." As a result, in the opinion of this office, on such date, that Council was authorized to function as set out in the act.

Such conclusion is necessary in order to avoid an absurd result of having no functioning Council and to read all relevant provisions in pari materia. Moreover, such an interpretation gives force and effect to the entire act and to the General Assembly's presumed intent that there be a Council in place. As to your question regarding whether the six ex officio members identified in Section 23-23-20(A) constitute the Council until January 1, 2007 when the remaining members are to begin serving, in the opinion of this office, these six would constitute the Council. Inasmuch as the Council is composed of eleven members, these six would serve as a quorum and, therefore, the Council could meet. While subsection (C) of such provision states that "[t]his council shall meet for the first time within ninety days after January 1, 2007", as to the use of the word "shall",

> ...there is no absolute test by which it may be determined whether a statutory provision is mandatory or directory...Although the word "shall" is generally construed to be mandatory, it may be and frequently is held to be merely directory. In determining whether...the provision...(is)...to be mandatory or merely directory, consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction. Provisions which are not of the essence of the thing to be done, but which are included for the purpose of promoting the proper, orderly, and prompt conduct of business, are not generally regarded as mandatory....Generally, provisions regulating the duties of public officers and specifying the time for their performance are held to be directory....

Texas Department of Public Safety v. Mendoza, 956 S.W.2d 808, 811-812 (Tex. 1997).

Similarly, the Kansas Court of Appeals in its decision in State v. Residential Unit & Real Estate at 930 Windwood#2, Junction City KS 66441, 983 P.2d 865, 866 (Kan. 1999), determined that as to the construction of the term "shall" as mandatory or directory,

> [w]hen ascertaining legislative intent, the general rule is that the entire statute, including its nature, object, and the consequences which result from either construction, is to be considered. A statutory provision is regarded as directory if it relates to some immaterial matter, such as where compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute merely give a view to the proper, orderly, and prompt conduct of business, unless followed by words of absolute prohibition. A statutory provision is also regarded as directory if no substantial rights depend on it, no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than described, with substantially the same results. A statutory provision is considered mandatory if it is the essence of the thing to be done to matters of substance.

Also, as determined by the Ohio Supreme Court in State ex rel. Jones v. Farrar, 66 N.E.2d 531, 532 (Ohio, 1946),

> [a]s a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure; and, unless the object or purpose of a statutory provision requiring some act to be performed within a specified period of time is discernible from the language employed, the statute is directory and not mandatory.

See also: Heller v. Wolner, 269 N.W.2d 31, 33 (Minn. 1978) ("the well established rule of statutory construction...(is)...that statutory provisions defining the time and mode in which public officers

shall discharge their duties, and which are obviously designed merely to secure order, uniformity, system, and dispatch in public business, are generally deemed directory.").

Consistent with such, in the opinion of this office, the reference to the meeting date of ninety days after January 1, 2007 is merely directory, as to the meeting of the full Council with all the gubernatorial appointees in place, but does not prohibit the Council with the six ex officio members meeting prior to that time. Such is especially the case in examining the entire Act where in subsection (E)(2) of Section 23-23-10 the term "council" for purposes of the legislation is defined as "the Law Enforcement Training Council created by this chapter." As referenced above, the law regarding the Council was effective on May 30, 2006. On that day, "all functions, duties, responsibilities, accounts and authority statutorily exercised by" the Criminal Justice Academy was "transferred to and devolved upon" the Council authorized by the legislation, "...the Law Enforcement Training Council created by this chapter." It appears that the reference to the date of ninety days after January 1, 2007 is simply directory as to the time for the full Council to meet as part of the orderly procedure of the full Council being put into place. The consequences of reading the legislation otherwise would result in there being no authority for the Council to meet presently, an absurd result which presumably the General Assembly would not have intended. Therefore, the six ex officio members of the Council may meet prior to January 1, 2007.

If there is anything further, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General