



ALAN WILSON  
ATTORNEY GENERAL

December 22, 2011

James M. Holly, Chief of Staff  
South Carolina Office of Comptroller General  
1200 Senate Street  
305 Wade Hampton Building  
Columbia, SC 29201

Dear Mr. Holly:

We received your letter requesting an opinion of this office addressing whether or not circuit public defenders are entitled to accrue annual leave under leave policies for state employees. If circuit public defenders are entitled to annual leave, you ask whether or not they are also entitled to receive payment for accumulated, unused annual leave (“terminal leave”) upon leaving the position.

S.C. Code Ann. §17-3-510 provides that in each judicial circuit of this state, a Circuit Public Defender Selection Panel must nominate a person to serve as the circuit public defender in the judicial circuit. Specifically relevant to your question, §17-3-510 (B) states: “. . . [t]he circuit public defender for each judicial circuit must be a full-time employee of the State and must be compensated and have the same benefits as the circuit solicitor.” [Emphasis added].

In reading §17-3-510 (B), a number of fundamental principles of statutory construction must be considered. The cardinal rule of statutory interpretation is to determine the intent of the Legislature. Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369, 377 (Ct. App. 2005). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240, 242 (2002); State v. Morgan, 352 S.C. 359, 574 S.E.2d 203, 206 (Ct. App. 2002). “Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.” S.C. Farm Bureau Mutual Ins. Co. v. Mumford, 299 S.C. 14, 382 S.E.2d 11, 14 (Ct. App. 1989).

The Legislature’s intent should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 606 S.E.2d 503, 505 (Ct. App. 2004). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843, 846 (1992). What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000).

When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C.

303, 613 S.E.2d 364, 366 (2005); Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177, 179 (1994). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and a court has no right to look for or impose another meaning. Tilley v. Pacesetter Corp., 355 S.C. 361, 585 S.E.2d 292, 298 (2003); Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995); see also Timmons v. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805, 817 (1970) ["Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language"].

In addition, it is well recognized that "[a] statute should not be construed by concentrating on any isolated phrase." Instead, "[i]n construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). All provisions of a statute must be given full force and effect, if consistent. Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228, 230 (1952). Finally, it is well-settled that a specific statutory provision prevails over a more general one. Wooten v. S.C. Department of Transportation, 333 S.C. 464, 511 S.E.2d 355, 357 (1999).

Turning now to your question, we note this office has previously concluded that elected officials were not entitled to accrue and be paid for either annual leave or sick leave. See Ops. S.C. Atty. Gen., March 31, 1987 [no payment for annual leave for elected, outgoing county supervisor]; January 10, 1983 [no sick or annual leave, or terminal leave pay, for elected officials, constitutional officers]; June 11, 1979 [no payment for unused "annual leave" for a county treasurer]; October 5, 1976 [no sick leave for officers elected on a statewide basis]; see also Op. S.C. Atty. Gen., October 2, 1978 [no sick or annual leave for a family court judge]. This remains the opinion of this office.

Circuit solicitors are full-time employees of the state, see §1-7-325, but they may not accrue annual leave, because they are elected officials. Although circuit public defenders are deemed full-time state employees under §17-3-510 (B), and are thus entitled to certain benefits accorded to state employees, we note that the Legislature specifically provided that circuit public defenders "must be compensated and have the same benefits as the circuit solicitor." *A fortiori*, circuit public defenders are not covered under leave policies established for state employees and may not accrue annual leave.<sup>1</sup> We deem the language of §17-3-510 (B) to be a limitation of the benefits otherwise afforded to circuit public defenders as state employees. Our interpretation harmonizes with the plain language of the statute and its general purpose. Had the Legislature intended for circuit public defenders to accrue annual leave or to be entitled to other benefits to which circuit solicitors are not, it would not have expressly limited the compensation and benefits of circuit public defenders to those of circuit solicitors. Any other interpretation of this specific provision would render the statute meaningless. There is "a presumption that the legislature intended to accomplish something with a statute rather than to engage in a futile exercise." Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760, 762 (1993).

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<sup>1</sup>Because we answered your first question in the negative, we need not address whether circuit public defenders are entitled to terminal leave.

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If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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