



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 11, 2001

The Honorable Alfred B. Robinson, Jr.
Member, House of Representatives
P.O. Box 1561
Easley, South Carolina 29641

RE: Informal Opinion

Dear Representative Robinson:

By your letter of April 3, 2001, you have requested an opinion of this Office concerning a veterans affairs officer. You ask if the officer "would be considered a county employee so that a decision to continue his county compensation beyond the 45 days of paid military leave pursuant to Section 8-7-90 turns on policies and procedures of the county government or, in the alternative, whether a county legislative delegation has the authority to determine whether to continue this county compensation beyond the 45 days of paid military leave."

Your letter results from a previous letter from Deputy Attorney General Zeb Williams to G. Edward Welmaker, the Pickens County Attorney. In that letter, Deputy Attorney General Williams advised that officers and employees of a political subdivision serving in the National Guard or Reserve Components are entitled to an aggregate of fifteen days of paid military leave per year, or, if called upon to serve in an emergency, up to an additional thirty days of paid leave. The letter also relied upon a memorandum of the State Director of Human Resources, who concluded that Section 8-7-90 would apply to all officers and employees called to active duty in Bosnia, entitling them to a maximum of forty-five working days of paid leave.

Your follow-up question appears to ask if either the county or the county legislative delegation has the authority to extend the officer's compensation beyond the forty-five days authorized by Section 8-7-90. In a prior opinion of this Office, dated October 27, 1998, we advised that the county veterans affairs officer, although considered a county officer, would serve at the pleasure of the appointing body, the county legislative delegation. In this case, the power to appoint would include not only how long the officer serves, but how he serves, as well. Thus, we concluded, the county's employee personnel policies would be inapplicable to the veterans affairs officer. See OP. ATTY. GEN. Oct. 27, 1998.

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That being said, however, we believe that neither the county nor the county legislative delegation would have the authority to extend the period for paid military leave beyond forty-five days. The prior opinion does suggest that the delegation would normally control the personnel policy applicable to the veterans affairs officer. However, that personnel policy could not contravene state law. Section 8-7-90 applies to "officers and employees of this State or a political subdivision." Thus, the State law is applicable to a county officer such as the veterans affairs officer. Section 8-7-90 further states that "[i]n the event any such person is called upon to serve during an emergency he is entitled to such leave of absence *for not exceeding* thirty additional days." (Emphasis added). The use of the language "for not exceeding" in the statute appears to cap the amount of time public employees and officers may be paid for military leave at a maximum of forty-five days. In our opinion, an attempt to extend the veterans affairs officer's paid military leave time beyond this period would be inconsistent with this statute. I have enclosed for your review an opinion of February 20, 1986, which supports this conclusion and advises that a city council could not authorize ninety days of paid military leave as part of its employee personnel policy.

As a final note, you may wish to seek a legislative amendment to Section 8-7-90 that would allow county legislative delegations the authority to extend paid military leave for veterans affairs officers. Or, more broadly, the statute could allow political subdivisions the option to extend military leave for all of the political subdivision's employees and officers. Such an amendment would leave any extensions of paid military leave to the wise discretion of the delegation and local governing bodies.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General