



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 17, 1997

The Honorable C. Tyrone Courtney  
Senator, District No. 13  
Box 2229  
Spartanburg, South Carolina 29304

Re: Informal Opinion

Dear Senator Courtney:

You recently forwarded to me a letter from the Croft Fire District seeking clarification with respect to Title 8, Chapter 7 of the South Carolina Code of Laws. Specifically, Chief Mullinax has inquired whether for the purposes of computing military leave, does the term "day" mean a 24 hour period or does it mean a common 8 hour workday. Moreover, Chief Mullinax asks whether state, local and municipal governments can force their employees who are in the National Guard or Reserves to use vacation and/or compensatory time in connection with their military duties after they have exhausted their fifteen days of annual military leave.

In response to Chief Mullinax's first question, enclosed for your review is a copy of Op. Atty. Gen., (July 8, 1996). As you can see, this Office has previously held that Title 8, Chapter 7 of the S.C. Code "... does not attempt to define the phrase 'regularly scheduled work day' by reference to a specific number of working hours. In other words, the number of regularly scheduled work hours that compose a work day is not a consideration in interpreting [§ 8-7-90]." (Emphasis added.) Accordingly, those state, county and municipal government employees whose regularly scheduled work day is longer than eight hours, e.g., twelve, sixteen, or twenty-four hour shifts, are statutorily authorized to take up to fifteen such regularly scheduled work days in any one year for military leave. This interpretation most clearly effectuates the legislative mandate that the provisions of § 8-7-90 "... must be construed liberally to encourage and allow full

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participation in all aspects of the National Guard and reserve programs of the United States ...." (Emphasis added.)

As to Chief Mullinax's second question, I again call your attention to S.C. Code Ann. § 8-7-90, which provides in relevant part:

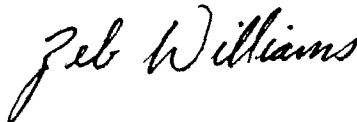
In the event any [officer or employee of this State or a political subdivision thereof who is a member of the South Carolina National Guard or a United States reserve program and who] is called upon to serve during an emergency he is entitled to such leave of absence for not exceeding thirty additional days. [Emphasis added.]

Accordingly, this provision authorizes up to thirty additional days of leave for employees of the State and its political subdivisions who are called up for military duty during a time of emergency. Both the South Carolina Supreme Court and this Office have defined "emergency" under state law as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency." Hice v. Dobson Lumber Co., 180 S.C. 259, 185 S.E. 742 (1936); Ops. Atty. Gen. (December 5, 1983 and August 22, 1990). Questions involving any extra days of non-emergency military duty should be resolved by reference to the applicable local personnel policy, which this Office would have no jurisdiction to interpret.

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions 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 am

Very truly yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/an

Enclosure

cc: David L. Mullinax, Chief  
(With Enclosure)