

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 21, 1993

Major Israel Brooks, Jr.
State Highway Patrol
P. O. Box 191
Columbia, South Carolina 29202

Dear Major Brooks:

You have raised questions concerning your proposed nomination for United States Marshal and its impact on your service as a member of the State Highway Patrol. You particularly questioned the interpretation of pending legislation which provides early retirement incentives as it might apply to your nomination for U.S. Marshal, particularly if your appointment becomes effective prior to August 1, 1993. Such legislation states:

Pursuant to Section 59-103-15, any governing body, state agency, school district or political subdivision participating in the South Carolina Retirement System or the Police Officers Retirement System may elect to offer a one-time lump sum payment of 25% of the employee's budgeted base salary or \$7,500 whichever is greater at the time of retirement. The governing body, state agency, school district or political subdivision must adopt a resolution wherein the employer agrees to be liable for funding any costs associated with the retirement incentive. Eligible employees must make a voluntary but irrevocable election no earlier than August 1, 1993 and no later than November 1, 1993 to retire from their permanent positions. ...

Of course, inasmuch as the legislation is still pending, this response is based solely on the interpretation of the provision as stated above.

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As referenced, an eligible employee must make the election "no earlier than August 1, 1993" to retire from his or her position. Therefore, you must be considered a state employee as of the date you make the election. You indicated that you have sufficient annual leave accumulated which you could utilize if you left your position prior to August 1st in order to assume the U.S. Marshal position. Pursuant to S.C. Code Section 8-11-620, an employee may have a vested entitlement to any accrued annual leave not to exceed forty-five days. See: Opin. of the Atty. Gen. dated December 3, 1981. However pursuant to Regulations of the Division of Human Resource Management, for an employee with a five day workweek schedule, the maximum number of earned working days of annual leave which may be used in any one calendar year shall not exceed thirty (30) working days. It appears, therefore, that if you are considered a state employee as of August 1, 1993 you would be entitled to make the election to retire and be entitled to receive the referenced lump sum payment.

Furthermore, there would not appear to be any dual office holding prohibition if you were to assume the federal position while still on the State payroll. Prior opinions of this Office have concluded that federal positions or offices are not within the dual office holding prohibitions of the State Constitution. See: Opins. of the Atty. Gen. dated July 23, 1987 and March 21, 1979.

Of course, any internal policies of your agency would also have to be considered. Additionally, you may wish to contact the Division of Human Resource Management for their review. This letter should not be construed as a review of such policies of these other agencies.

If there is anything further, please advise.

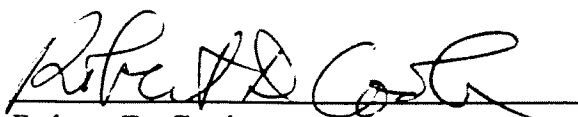
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions