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# The State of South Carolina

## Office of the Attorney General

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April 14, 1993

The Honorable James Lee Foster
Sheriff, Newberry County
P. O. Box 247
Newberry, South Carolina 29108

Dear Sheriff Foster:

In a letter to this Office you raised several questions. You first asked whether an employer is required to give a reservist time for weekend drill when that employee is scheduled to work on that weekend. You referenced that the reservist in question works rotating shifts and is required to work on weekends.

S.C. Code Ann. Section 8-7-90 states

> All officers and employees of this State or a political subdivision of this State who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days in any one year during which they may engage in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and state holidays may not be included in

> the fifteen-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled work day for the officer or employee involved.

The statute further specifies that its provisions are to be "construed liberally to encourage and allow full participation" in National Guard and Reserve programs. Referencing such, it is my conclusion that an employer is required to provide a reservist time for weekend drill when the employee is scheduled to work on that weekend provided that the weekend drill constitutes "training or any other duties ordered" as set forth above.

You also questioned whether a county councilman can hold a reserve officer's commission. Prior opinions of this Office have concluded that the positions of reserve officer, as authorized pursuant to S.C. Code Ann. Sections 23-28-10 et seq., and county councilman constitute offices for dual office holding purposes. See: Opins. dated March 19, 1990, February 5, 1988 and August 12, 1991, copies of which are enclosed. Therefore, simultaneous service as a member of county council and as a reserve officer would probably run afoul of the dual office holding provisions. As to whether a county councilman can hold a state constable's commission, as referenced in the February 5, 1988 opinion, this Office has concluded that S.C. Code Section 8-1-130 excepts holders of constables' commissions from considerations of dual office holding for purposes of the State Constitution. Therefore, a county councilman could simultaneously hold a state constable's commission.

You next questioned whether a sheriff's office can keep and maintain snack type vending machines which were purchased with private, as opposed to public, funds. You indicated that:

> This money will be used to provide recreation for the employees which is not provided through tax based budgets. It may be used to provide scholarships to high school students or those wanting to continue their education. Up keep of machines would be done on non-duty hours by volunteer personnel. We would like to possibly set up a foundation to be funded in part by snack sales.

A prior opinion of this Office dated June 1, 1992, a copy of which is enclosed, dealt with the similar question of the manner of handling jail canteen profits. That opinion cites another opinion of this Office dated November 15, 1985 which recognized that

> "public funds" are those monies belonging to a government, be it state, county, municipal or other political subdivision in the hands of a public official ... Such funds are not necessarily limited to tax moneys ....

The opinion stated that athletic, bookstore or canteen funds generated by State colleges or universities should be considered "public funds" and therefore must be spent in a manner consistent with State law. See also: Opins. dated August 10, 1973 and April 26, 1983 noted in the 1992 opinion. The 1992 opinion concluded

> I am unaware of any State statute or regulation which provides for the manner of use of jail canteen profits. Consistent with the prior opinions cited above, it appears that such profits could be considered "public funds" and accordingly should not be used for individual inmates. Inasmuch as such profits may be considered "public funds", utilization of such profits for the entire inmate population could probably be authorized. A program benefiting the welfare of the general inmate population could be construed as meeting a public purpose test. Of course, in evaluating the use of such profits, consideration must be given to relevant county ordinances or policies which may control.

The opinion also referenced that as to the question of whether canteen profits could be used for a facility Christmas party, an opinion of this Office dated May 27, 1989 determined that expenditure of public funds for picnics and social events for county employees and members of the county governing body were improper. The opinion concluded therefore that canteen profits similarly could not be used for a facility party.

Consistent with these previous opinions, the funds generated by the vending machines "kept and maintained" by the Sheriff's office could be considered public funds. As a result, such should not be expended for recreation for employees. As to the suggested use for scholarships for high school students or those wanting to continue their education, such a purpose would appear to be comparable to the program referenced in the 1992 opinion which would benefit the entire inmate population, as opposed to individual inmates. Therefore if the program was of widespread applicability, such would appear to be authorized.

You last questioned the sentence to be imposed on individuals guilty of distribution of crack cocaine or possession with intent to distribute crack cocaine. S.C. Code Ann. Section 44-53-375(B) provides that:

> Any person who manufactures, distributes, dispenses, delivers, purchases or otherwise aids, abets, attempts or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver ice, crank, or crack cocaine, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction, for a first offense, must be sentenced to a term of imprisonment of not less than fifteen years nor more than twenty years and fined not less than twenty-five thousand dollars. For a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, the offender must be imprisoned for not less than twenty-five years nor more than thirty years and fined not less than fifty thousand dollars. For a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, the offender must be imprisoned for not less than thirty years nor more than forty years and fined not less than one hundred thousand dollars. Possession of one or more grams of ice, crank, or crack cocaine is prima facie evidence of a violation of this subsection.

Subsection (D) of such provision states:

> Except for a first offense, as provided in subsection (A) of this section, sentences for violation of the provisions of this section may not be suspended and probation may not be granted. (emphasis added)

Therefore, a sentence for a violation of (B) may not be suspended nor probation granted. However, the provision does not specifically deny parole eligibility. Compare: S.C. Code Ann. Section 44-53-370(e)(4) for the offense of "trafficking in methaqualone", "any person convicted and sentenced under this subsection to a mandatory minimum term of

imprisonment of twenty-five years or a mandatory term of twenty-five years or more is not eligible for parole, extended work release, ... or supervised furlough." Of course, such provision could be amended by the General Assembly to specifically deny parole eligibility.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:

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