



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 25, 1997

The Honorable Robert J. Sheheen
Member, House of Representatives
1111 Church Street
Camden, South Carolina 29020

Re: Informal Opinion

Dear Representative Sheheen:

You reference Act No. 129 of 1997 (H.3317). This Act adds Code Section 23-6-405 to provide for the reimbursement to a law enforcement agency for the mandatory training costs for an officer who moves to another law enforcement job within two years of the training. The statute requires that the subsequent employer must reimburse the first employer 100% of the costs if the officer is hired within one year of the training and 50% of the costs if the officer is hired within two years of the training. The Act states that after July 1, 1997 the provisions of this Act must be complied with by the governmental entities intending to hire law enforcement officers. The Act became effective on June 15, 1997. Your questions concerning the Act's application are as follows:

[d]oes this Act cover all officers hired after July 1st or does it cover all mandatory training begun after July 1st? For example, does the Act cover a situation where a governmental entity hires an officer on July 2nd and that officer had worked for the previous entity for 18 months and that entity had paid for his training? Or, does the Act cover the situation of an officer who begins and completes mandatory training after July 1st who then accepts a second position within two years? In other words, does the Act apply retroactively or prospectively from July 1, 1997?

Law / Analysis

New Section 23-6-405 provides as follows:

Section 23-6-405. (A) For purposes of this section "governmental entity" means the State or any of its political subdivisions.

(B) After July 1, 1997, every governmental entity of this State intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required under this article must comply with the provisions of this section.

(C) If the law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State, and within two years from the date of satisfactory completion of the mandatory training, a subsequent hiring governmental entity shall reimburse the governmental entity with whom the law enforcement officer was employed at the time of attending the mandatory training:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(D) If the law enforcement officer is employed by more than one successive governmental entity within the two-year period after the date of satisfactory completion of the

mandatory training, a governmental entity which reimbursed the governmental entity that employed the officer during the training period may obtain reimbursement from the successive governmental entity employer for:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(E) Under no circumstances shall the governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer be reimbursed for more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training. (emphasis added).

A number of basic principles of statutory interpretation are relevant to your inquiry. First and foremost, is the long-recognized tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, it will be presumed that the General Assembly did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938). Where terms of a statute are positive and unambiguous, exceptions not made by the Legislature cannot be read in by implication. Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

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As I read the law, the General Assembly has expressly chosen in Subsection (A) to draw the line as to the law's applicability at every governmental entity of the State which is "intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required" under the Article, if such intention to employ occurs "[a]fter July 1, 1997" Should such hiring occur after July 1, 1997, the governmental entity "must comply with the provision of this section." Thus, on its face, the statute requires that if the second hiring of the officer occurs after July 1, 1997, the law is applicable, thereby requiring the requisite reimbursement. This reading of the statute is further reinforced by Subsection (C)'s language which states that "[i]f the law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State, and within two years from the date of satisfactory completion of the mandatory training," the officer is subsequently hired by a second entity, that second entity must reimburse in the manner specified. (emphasis added). In other words, this provision is written in the past tense, and follows the preceding subsection relating to the date of July 1, 1997, thus indicating that training and a first hiring was envisioned as having occurred prior thereto. It would have been a simple matter for the Legislature to have written in the future tense with regard to the events of training and a first hiring if such had been intended. The apparent reason that the General Assembly did not do this is that such future tense language would have delayed any implementation of the statute. Clearly, the Legislature would not have made the law immediately effective if this future implementation were its design. Thus, while the phrase "after July 1" could conceivably be construed as requiring training and a first hiring to occur after such date, it appears far more likely, based upon the overall sentence structure, that the term "after July 1" was intended to reference to second hiring only.

Moreover, any concern regarding the law's retroactivity is not present in this instance. For, it is well recognized as a rule of statutory construction the following principle:

a statute does not operate retroactively merely because it [is] related to antecedent events, or because part of the requisites of its action is drawn from time antecedent to its passing, but is retroactive only when it is applied to rights accrued prior to its enactment.

Op. Atty. Gen., July 1, 1983, quoting 82 C.J.S., Statutes, § 412. In this instance, the right of reimbursement is triggered only after the hiring of an officer by a second entity after July 1. Thus, the statute is not really "retroactive" in the eyes of the law even though events leading up to the triggering of the reimbursement obligation may indeed occur prior to July 1, 1997 (training and first hiring). Plainly, the Legislature has acted within its

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constitutional prerogative in choosing to make July 1, 1997 the date after which the hiring by a second entity within the terms of the statute triggers the reimbursement obligation.

In conclusion, it is my opinion that Act. No. 129 of 1997 should be read to require that any hiring by a second entity after July 1, 1997 triggers the Act's reimbursement requirements. So long as the second employment occurred after July 1, 1997 and the Act's requirements are otherwise met, reimbursement would be required.

This letter is an informal opinion only. It has been written by a designated Assistant 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,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph