

6287 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 22, 1997

Michael G. Wilkie, Chief of Police
Springdale Police Department
2915 Platt Springs Road
Springdale, South Carolina 29170

Re: Informal Opinion

Dear Chief Wilkie:

You have referenced Regulation 38-170 of the Law Enforcement Training Council. You have further sought "to know something about the history behind this provision." Your concern is "why Reserve Officers who have completed at least 240 hours of in service training cannot be certified to operate Radar."

Such Regulation, 38-170, which you have referenced, provides as follows:

A. Qualification

Only Class 1 certified law enforcement officers may be accredited as traffic radar operators.

B. Accreditation

To be accredited as a traffic radar operator, a law enforcement officer must complete a course of training taught by a certified law enforcement traffic radar instructor.

This Regulation is discussed in an Informal Opinion of this Office, dated June 11, 1997, which I have enclosed. Of course, an administrative agency possesses discretion to promulgate regulations which a court will generally uphold unless such regulation is beyond the authority of the agency or constitutes an abuse of discretion. As has been stated previously by this Office in an Informal opinion dated November 27, 1995:

Re: Robert H. Hottel

Chief Wilkie
Page 2
September 22, 1997

it is obviously not the province of this Office to comment upon the policy considerations or wisdom of a particular regulation promulgated by an administrative agency. As we have stated on numerous occasions, an administrative agency is afforded considerable discretion in the regulatory process. State law does not authorize this Office to supersede the administrative agency's authority or the discretion of that agency possessed with the expertise to promulgate regulations. Courts, as well as legal opinions of the Office of the Attorney General, must as a matter of law afford considerable latitude to the agency's discretion. See, Op. Atty. Gen., August 21, 1991. Such regulations generally are deemed to stand unless they are in contravention of or lacking in statutory authority or inconsistent with the federal or state Constitutions. An agency's regulations are presumed valid until challenged. U.S.C. v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978) (Littlejohn, J. concurring).


I cannot conclude that the foregoing Regulation is beyond the requirements of the law and, therefore, such person must meet the requirement as specified in the Regulation.

My only suggestion would be for the Reserve Officer to attempt to meet the requirements of Class 1 certification pursuant to Regulation 38-160 (D) (1) as specified in the enclosed Regulation. Furthermore, you may wish to discuss this matter with Mr. Henry Wengrow with the Department of Public Safety. His telephone number is 896-7780. He may be able to shed light upon the policy reasons and history of such Regulation.

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
Enclosures