

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: 803-734-3680
FACSIMILE: 803-253-6283

January 17, 1991

The Honorable Landon M. Louthian, Jr.
Chief Judge, Municipal Court of Hanahan
Post Office Box 9278
Hanahan, South Carolina 29410

Dear Judge Louthian:

Attorney General Medlock referred your recent letter to me for response. You ask: "Excluding Section 25-1-2310 and Sections 25-3-10 through 25-3-210, inclusive, are any other provisions of the Military Code applicable to members of the [South Carolina] State Guard?"

The South Carolina State Guard is created and governed by Chapter 3 of Title 25 of the South Carolina Code of Laws. S.C. Code Ann. §25-3-10 through -210 (1976). Section 25-3-10 states:

A South Carolina State Guard is hereby established. Such force shall be additional to and distinct from the National Guard and shall be known as the South Carolina State Guard. The Adjutant General shall organize and maintain within the State, under such regulations as the Secretary of the Army may prescribe for discipline and training, the South Carolina State Guard with such table of organization and equipment as the Adjutant General may deem necessary. [Emphasis added.]

The Military Code for South Carolina is codified at S.C. Code Ann. §§25-1-10 through -3210 (1976 & 1990 Cum. Supp.). Section 25-1-10 provides definitions for various words as they are used in the Military Code. In addition, §25-1-60 states:

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The militia of the State shall consist of all able-bodied citizens of the United States and all other able-bodied individuals who have declared their intention to become citizens of the United States, residing within this State, who must be over seventeen years of age. The militia must be divided into three classes, the National Guard, the organized militia, and the unorganized militia. [Emphasis added.]

Because the South Carolina State Guard is additional to and distinct from the National Guard of South Carolina, the South Carolina State Guard would apparently fall into the classification of the organized militia.

Several of the provisions of the Military Code refer specifically and expressly to the National Guard of South Carolina. See, e.g., S.C. Code Ann. §§25-1-30 ("National Guard shall conform to Federal laws."); 25-1-100 ("Pension of members of National Guard wounded or disabled while in service of State."); 25-1-2200 ("Pay of National Guard on active duty."); 25-1-2310 ("South Carolina National Guard member entering state duty entitled to reemployment upon honorable release."). Such provisions would, therefore, apparently not apply to the South Carolina State Guard.

Other provisions of the Military Code refer generally to the militia. See, e.g., S.C. Code Ann. §§25-1-40 ("Applicability of Uniform Code of Military Justice."); 25-1-310 ("Administration of State militia."); 25-1-610 ("Discharge of officers."); 25-1-1380 ("Transportation and subsistence of militia on State duty."). Such provisions would appear to apply to the South Carolina State Guard as classified as the organized militia.

Consequently, some provisions of the Military Code appear to apply only to the National Guard of South Carolina. Other provisions of the Military Code appear also to apply to the South Carolina State Guard. Whether the South Carolina General Assembly intended a specific provision of the Military Code to apply to the South Carolina State Guard would depend in large measure upon the specific language contained in that provision. See, Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983) (When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statute.). Of course, statutory construction is ultimately the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

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Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Assistant Attorney General

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REVIEWED AND APPROVED BY:

E. E. Evans

Edwin E. Evans
Chief Deputy Attorney General

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions