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February 15, 1989

Phyllis M. Mayes, Director
Division of Human Resource Management
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Dear Phyllis:

As you know, your letter dated January 16, 1989, to Attorney General Medlock has been referred to me for response. By that letter, you requested "an opinion from [this] office as to whether permanent full-time state employees includes employees who are in probationary status for the purpose of administrative leave as provided for in Section 8-11-40 of the Code."

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the

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court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Where the same word is used more than once in a statute, it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). In construing a statute, it is proper to consider legislation dealing with the same subject matter. Fidelity and Casualty Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

S.C. Code Ann. §8-11-40 (1976) provides, in relevant part:

All permanent full-time state employees are entitled to fifteen days sick leave a year with pay. Sick leave is earned by permanent full-time state employees at the rate of one and one-fourth days a month and may be accumulated, but no more than one hundred eighty days may be carried over from one calendar year to another.... All permanent part-time and hourly employees are entitled to sick leave prorated on the basis of fifteen days a year subject to the same carry-over specified herein.... The State Budget and Control Board, through the Division of Personnel, may promulgate those regulations in accordance with law as may be necessary to administer the provisions of this section, including the power to define the use of sick leave.

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Permanent full-time state employees who are temporarily disabled as a result of an assault by an inmate, patient, or client must be placed on administrative leave with pay by their employer rather than sick leave....[Emphasis added.]

Your inquiry concerns the last paragraph quoted above. Considering that same language of §8-11-40, this Office has previously opined, inter alia, that

S.C. Code Ann. §§8-11-40 & -41 (1976) should probably both be construed as expressly empowering the State Budget and Control Board to promulgate regulations to administer administrative leave with pay for permanent full-time state employees who are temporarily disabled as a result of an assault by an inmate, patient, or client.

S.C. Att'y Gen. Op., (Feb. 19, 1988).

Pursuant to §8-11-40 which entitles "permanent full-time state employees" to sick leave, the State Budget and Control Board promulgated S.C. Code Ann. R 19-703.08(A)(1) (vol. 23A 1976 & 1988 Supp.)¹ which states:

¹ S.C. Code Ann. R 19-706.08(A)(1) (vol. 23A 1976 & 1988 Supp.) was promulgated pursuant to the requirements of S.C. Code Ann. §1-23-10 through -160 (1976). For purposes of this analysis, R 19-706.08(A)(1) is presumed to be constitutional. See Sutherland Stat. Constr. §31.02 (4th ed. 1985) ("Since the presumption of validity which runs in favor of statutes appears to be a function of judicial review, where judges are asked to rule on positions already taken by other officials of the government, a similar presumption logically runs in favor of administrative regulations. [Footnotes omitted.]). Compare Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988) (When the validity of a legislative act is questioned, the court will presume the legislative act to be constitutionally valid, and every intendment will be indulged in favor of the act's validity by the court.) with 2 Am. Jur. 2d Administrative Law §298 ("An act of an administrative agency which is legislative in character and has the force of a statute is subject to the same tests as to its validity as an act of the legislature intended to accomplish the same purpose....") and 73 C.J.S. Public Administrative Law and Procedure §92 ("An administrative rule which is legislative in character is subject to the same tests with reference to its validity as an act of legislature, that is, the same principles governing statutes apply to the rules. [Footnote omitted.]).

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A. Eligibility

Sick leave shall be accrued by and granted to:

1. Permanent and probationary full-time employees....
[Emphasis added.]

Thus, the State Budget and Control Board's regulations and interpretation of "permanent full-time state employee" as that phrase is used in the first paragraph of §8-11-40 includes full-time State employees who are in a probationary status. Such construction is entitled to the most respectful consideration and should not be overruled without cogent reasons. See Dunton v. South Carolina Bd. of Examiners in Optometry, supra.

The second paragraph of §8-11-40 which is at issue here also uses the phrase "permanent full-time state employees." Presumably, that phrase would have the same meaning in the second paragraph as it does in the first paragraph of §8-11-40. See, Smalls v. Weed, supra; Powers v. Fidelity & Deposit Co. of Maryland, supra. Therefore, the phrase "permanent full-time state employees" in the second paragraph of §8-11-40 would include full-time state employees in a probationary status. Compare S.C. Code Ann. §8-11-40 (1976) (entitlement of "permanent full-time state employee" to sick leave) and S.C. Code Ann. R 19-706.08(A)(1) (1976 & 1988 Supp.) (eligibility of sick leave to be accrued by and granted to "[p]ermanent and probationary full-time employees) with S.C. Code Ann. §8-11-610 (1976) (entitlement of "permanent full-time state employees" to annual leave) and S.C. Code Ann. R 19-703.07(A)(1) (1976 & 1988 Supp.) (eligibility of annual leave to be accrued by and granted to "[p]ermanent and probationary full-time state employees).

If I can answer any further questions concerning this matter, please advise me.

Sincerely,



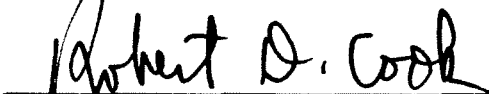
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