1984 S.C. Op. Atty. Gen. 318 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-133, 1984 WL 159939

Office of the Attorney General

State of South Carolina
Opinion No. 84-133
November 14, 1984

***1** V. C. Traywick
Assistant Comptroller General
Comptroller General's Office
Post Office Box 11228
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Dear Mr. Traywick:

You have asked the opinion of this Office whether Act No. 512, Part II, § 10, (1984) [1] authorizes the Budget and Control Board to implement a formula for prorating a state employee's accrued leave time, in order that the prorated leave time may be used in conjunction with temporary total disability payments provided by the Workers' Compensation Act. It is our opinion that the authority to implement such a formula is consistent with the purpose of the statute and thus is authorized.

In construing legislation, the cardinal rule is to ascertain and effectuate the legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). To determine this legislative intent, a statute should not be read in the atmosphere of sterility, but in the context of what is actually happening. Bolton v. Doe, 266 S.C. 344, 223 S.E.2d 187 (1976).

Prior to the enactment of Act 512, Part II, § 10, a state employee, who has suffered a work related injury and was entitled to temporary total disability payments pursuant to the Workers' Compensation Act [§§ 42–9–10, et seq.] was also entitled to collect payments from any accrued sick leave [§ 8–11–40] or annual leave [§ 8–11–620]. Since payments were available from more than one source, on occasion, an injured state employee received compensation at a higher rate of pay than while he or she was working full-time. [2] Although this scenario was not unique to state employees, the General Assembly determined that state employees should be prohibited from receiving both leave payments and Workers' Compensation temporary disability payments. Act 512, Fart II, § 10 represents this legislative intent to limit the use of accrued leave where a state employee is receiving a Workers Compensation temporary disability payment.

Importantly, however, in the enactment of Act 512, Part II, § 10, the General Assembly recognized that compensation benefits often times do not fully restore a state employee's lost wages during periods of temporary disability and thus expressed its intent that a state employee be entitled to receive a combination of leave and compensation benefits as established by formula of the Budget and Control Board. Your specific inquiry is directed at this proviso which reads as follows:
Provided, However, That an employee may also elect to receive Worker's Compensation on a prorated basis in conjunction with sick and/or annual leave in accordance with a proration formula which shall be established by the Budget and Control Board.

Although it is not completely clear from the language used, we believe the General Assembly intended that the Budget and Control Board provide a formula to authorize the use of prorated leave in conjunction with Workers' Compensation disability payments in order that an injured state employee would be restored to a position of receiving payments comparable to the salary the employee enjoys when he or she is able to work full-time. In reaching this conclusion, we reiterate the previously mentioned factual scenario which prompted the General Assembly to act. While the General Assembly does not expressly proscribe the enactment of a formula which may provide a payment rate to an injured state employee that is significantly greater than his or

her regular rate of compensation, a contrary construction would defeat the most obvious legislative intent to limit the use of accrued leave when a state employee is receiving a Workers Compensation temporary disability payment.

***2** Moreover, we doubt that the General Assembly intended that the Budget and Control Board by its formula amend or limit the amount of Workers Compensation payments the state employee is entitled to pursuant to the Workers Compensation Act [§ 42–9–10, et seq.]. Admittedly, the literal language of the proviso provides that worker's compensation may be prorated; however, the title to the statutory provision presents better guidance as to the intent of the legislature:
To Allow State Employees To Use Sick or Annual Leave on a Pro-rata Basis In Conjunction with Workers' Compensation.

Of course, the title or caption of an act may properly be considered in aid of construction to show the intent of the legislature. Lindsay v. Southern Farm Bureau Casualty, 258 S.C. 272, 188 S.E.2d 374 (1972). In addition, where, as here, the legislative purpose can reasonably be ascertained, such legislative purpose should prevail over the literal import of the statute. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). Consistent with these settled rules of statutory construction, we do not read the proviso as a casual attempt by the General Assembly to amend the Workers' Compensation Act; but instead, we believe the practical intent was to regulate the use of leave time by state employees. The inartfully drafted proviso does, however, create some confusion in this area, and the General Assembly should clarify with more precise language.

In conclusion, we advise that the Budget and Control Board may, consistent with the legislative purpose, implement a formula which provides for the prorating of accrued leave time for state employees, such leave time may be used by state employees to supplement Workers' Compensation temporary total disability payments in order to restore the injured employee to a compensation level that he or she enjoys when the employee is able to work full-time.
Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

1 Act 512 of 1984 Acts and Joint Resolutions is the state's General Appropriations Act for fiscal year 1984–1985. Part II thereof constitutes the permanent provisions of the Act.

2 The General Assembly apparently addressed this concern on at least one prior occasion. See, Act 466, Part II, § 37 of 1982. For unknown reasons, this provision, which was codified at § 8–11–150 of the amended code, was repealed approximately one year later. See, Act 151, Part II, § 47 of 1983.

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