

1980 WL 121139 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1980

**\*1 RE: Status of Municipal Employees Who are Also National Guardsmen**

Mr. Mike S. Jolly  
City Attorney  
P. O. Box 651  
Union, South Carolina 29379

Dear Mr. Jolly:

In your letter of February 15, 1980, you requested an opinion from this office in regard to seven specific questions concerning the above-captioned matter. I will answer these questions in the order in which they were asked:

1. The City of Union is considered a 'political subdivision' of this State within the meaning of [Section 8-7-90 of the Code of Laws of South Carolina \(1976\)](#). In a letter to the Newberry City Attorney on March 9, 1963, the Attorney General issued his opinion that cities and counties come within the phrase 'political subdivision' as used in this particular statute. In a different context, the Supreme Court has held that a municipality is a political subdivision of the State for governmental purposes. [Cochran v. City of Sumter](#), 242 S.C. 382, 131 S.E.2d 153 (1963).

2. A municipality is required to pay their employees full salary during their two-week training tour as National Guardsmen. This office has issued numerous opinions to this effect in previous years, contending that the legislative purpose in enacting these statutes was not only to mitigate the financial hardships that may be attendant upon military service, but also to act as a reward or incentive for employees to join the National Guard of Military Reserve. Therefore, employees of the State or its subdivisions are entitled to receive 'full, normal compensation from the State and political subdivisions without regard to the amount which they may receive from military sources.' <sup>1</sup>

3. A municipality is required to pay their employees, who are also National Guardsmen, their full, normal salary when 'called upon to serve during an emergency' for a period not exceeding thirty days. This period is in addition to the annual fifteen-day training tour. [See § 8-7-90](#).

4. In the May 9, 1963, letter to the Newberry City Attorney referred to previously, this office was of the opinion that: 'the vacation provided for State employees . . . [by statute] is exclusive of and in addition to the military leave provided for all public employees by . . . [[§ 8-7-90 \(1976 Code\)](#)]. It appears the generally accepted view that vacation with pay is not a gratuity but is compensation for services rendered.

\*\*\*

'With respect to municipalities, there is no Statewide statute authorizing or requiring that they be given annual vacations with pay. If the municipal ordinances provide for such a vacation, then the reasoning with respect to State employees would be applicable to municipal employees. Therefore, if municipal law provides for an annual vacation, it is my opinion that the employees are likewise entitled to additional military leave under the provisions of . . . [[§ 8-7-90](#)].'

5. A municipality may not discourage or forbid a municipal employee from joining the National Guard. Section 21-1-2190 of the Code prohibits any employer or other person from discriminating against a guardsman because of his National Guard obligation—

\*2 A person who, either by himself or with another (a) wilfully deprives a member of the National Guard of South Carolina of his employment (b) prevents such member from being employed (c) obstructs or annoys a member of his employer in his trade, business or employment because he is such a member or (d) dissuades or attempts to dissuade any person from enlisting in such National Guard by threat of injury to him or his employment, trade or business shall be guilty of a misdemeanor and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not more than thirty days.

6. It is the opinion of this office that an employer should not ask the question ‘Will you or do you intend to join the National Guard.’ Employers are required to conduct the applicant screening process in a non-discriminatory manner. Although applicable state law does not expressly prohibit pre-employment inquiries concerning a job applicant's intention to join the National Guard, it is my opinion that such questions frequently bear no demonstrable relationship to a job applicant's ability or qualification as an employee and, consequently, serve no lawful purpose. Accordingly, the utilization of such inquiries may weigh significantly in the determination that Section 21-1-2190 has been violated.

7. In a letter dated September 14, 1979, to the Chief of Staff, S.C.A.R.N.G., this office issued its opinion stating:  
... it should be noted that Section 25-1-2550 provides that state employees shall be entitled to ‘military leave’. Therefore, by the clear and unambiguous terms of the statute, this leave could not be construed as sick leave. In addition, it is equally clear that to charge a public employee's military leave against his sick leave would deprive him of full, normal compensation, since he would be deprived of this leave for use in actual sicknesses. This would obviously be contrary to legislative intent in enacting [Sections 25-1-2550](#) and [8-7-90](#).

I hope this has been of some assistance to you. If you have any further questions, please do not hesitate to contact me.  
Very truly yours,

Richard B. Kale, Jr.  
Senior Assistant Attorney General

#### Footnotes

- <sup>1</sup> Letter of Attorney General to Municipal Officer (April 14, 1972). See also, 1977 Op Atty Gen 218 (Opinion No. 77-285).  
1980 WL 121139 (S.C.A.G.)