

1980 S.C. Op. Atty. Gen. 100 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-52, 1980 WL 81935

Office of the Attorney General

State of South Carolina

Opinion No. 80-52

May 15, 1980

***1 SUBJECT: Armed Forces; Employees, Public; Leaves of Absence; National Guard; Public Officers; Statutes; Statutory Construction**

The phrase 'without loss of pay' as used in [Sections 8-7-90](#) and [25-1-2250 of the 1976 Code of Laws of South Carolina](#) means that the public employee or officer is entitled to receive his full, normal civilian pay, without taking into account any military compensation that he may receive.

TO: Fred P. Hamilton
Superintendent of Education and
Chairman, Oconee County School Board of Trustees

QUESTION PRESENTED:

Are members of the South Carolina National Guard or other U. S. Reserve components entitled to receive full pay from their respective public employers while attending annual field training, or are they only entitled to receive the difference between the military compensation and the compensation they would have received from the public employers (the State or any political subdivision thereof)?

CITATION OF AUTHORITIES:

[Sections 8-7-90, 25-1-10, 25-1-20, 25-1-2250, Code of Laws of South Carolina \(1976\)](#), as amended;

[44 Oklahoma Statutes, § 209 \(1973 Supp.\)](#);

Congressional Act of June 3, 1916, 39 Stat. 166, 203;

Congressional Act of May 12, 1917, 40 Stat. 72;

[Billings v. Truesdell](#), 321 U.S. 542, 64 S.Ct. 737, 88 L.Ed. 917 (1944);

[United States v. Bergh](#), 352 U.S. 40, 77 S.Ct. 106, 1 L.Ed.2d 102 (1956);

[Belk v. Nationwide Mutual Ins. Co.](#), 271 S.C. 24, 244 S.E.2d 744 (1978);

[Fulghum v. Bleakely](#), 177 S.C. 286, 181 S.E. 30 (1935);

[Etiwan Fertilizer Co. v. South Carolina Tax Commission](#), 217 S.C. 354, 60 S.E.2d 682 (1950);

[Reed v. City of Tulsa](#), 569 P.2d 451, 454 (Okla. 1977);

Decisions of the Comptroller General of the United States:

16 Comp. Gen. 767 (1937); 16 Comp. Gen. 1103 (1937); 20 Comp. Gen. 282 (1940); 27 Comp. Gen. 353 (1947); and 24 Comp. Treas. 81 (1917);

1977 Op. Atty. Gen. 218, No. 77-354 (September 12, 1977);

1968 U. S. Code & Cong. News 4288, 4289 (Sen. Rep. No. 1443);

1947 U. S. Code & Cong. News 1265, 1266 (H. R. Rep. No. 483);

82 C.J.S. Statutes § 371 (1953).

DISCUSSION:

[Section 8-7-90 of the 1976 Code of Laws of South Carolina](#) provides:

All officers and employees of this State or any political subdivision thereof, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, the Reserve Corps of the Marines, the Coast Guard Reserve and the United States Air Force Reserve shall be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating, for a period not exceeding fifteen days in any one year during which they may be engaged in training or other such duties ordered by the Governor, the War Department, the Treasury Department, the Navy Department or the Air Force Department. In the event any such person is called upon to serve during an emergency he shall be entitled to such leave of absence for not exceeding thirty additional days. (Emphasis added.)

*2 A similar provision is contained in [Section 25-1-2250](#) as part of the Military Code:

Officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay, seniority or efficiency rating, when attending National Guard encampments or schools for training, under proper authority, and on all other occasions when ordered to active duty, in the service of the State of South Carolina. (Emphasis added.)

The precise issue is whether the phrase ‘without loss of pay’ as used in both of the above statutes refers to full, regular pay, regardless of any military compensation, or only to the pay differential between military compensation and regular civilian salary.

In the interpretation of statutes, the primary function of courts is to ascertain and give effect to the intention of the legislature. [Belk v. Nationwide Mutual Ins. Co.](#), 271 S.C. 24, 244 S.E.2d 744 (1978). [Section 8-7-90 of the 1976 Code of Laws of South Carolina](#) has not been interpreted by our Supreme Court. However, insight into the intent of the legislature is possible by examination of the legislative history of this statute. The original Act containing the phrase ‘without loss of pay’ was first inserted into the temporary section of the Appropriations Act of 1944, under the Adjutant General's Office section. It remained there yearly until 1950 when it was inserted into the permanent provisions of the Appropriations Act. This predecessor Act of [§ 8-7-90](#) was apparently borrowed from the Congressional Act of May 12, 1917, 40 Stat. 72, which provided: ‘All officers and employees of the United States or of the District of Columbia who shall be members of the Officers Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed 15 days in any one calendar year; and when relieved from duty, they shall be restored to the positions held by them when ordered to duty.’ (Emphasis added.)

Moreover, the Military [Code of South Carolina, § 25-1-10](#), et seq., is an adoption¹ of the Congressional Act of June 3, 1916, 39 Stat. 166. Section 80 of this Act (39 Stat. at 203), which is the Federal analogue to [§ 25-1-2250](#), provides:

‘All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this Act.’ (Emphasis added.)

Although the federal courts have not been requested to interpret the phrase ‘without loss of pay’ as contained in either of these two Acts, the Comptroller General has consistently interpreted this phrase to mean that the federal employees are entitled to receive their full, regular pay, in addition to any military compensation they may receive. In a letter dated February 17, 1937, to the Secretary of the Navy, Acting Comptroller General Elliott stated that a government employee, who was ordered to perform 15 days military training duty, was ‘entitled to receive both his salary or compensation in the civilian position and the pay and allowances of his rating in the reserve’ . . . for the 15 days of his military leave. 16 Comp. Gen. 767 (1937).² In addition, Congress is aware of this dual compensation status of civilian government employees while on 15-day military leave, and has apparently acquiesced in the Comptroller General's administrative interpretation.³ Furthermore, the U. S. Supreme Court has held that administrative interpretations of statutes, consistently followed by the agencies charged with their administration, and not expressly changed by Congress, are entitled to great weight. [Billings v. Truesdell](#), 321 U.S. 542, 64 S.Ct. 737, 88 L.Ed. 917 (1944); [United States v. Bergh](#), 352 U.S. 40, 77 S.Ct. 106, 1 L.Ed.2d 102 (1956).

*3 In enacting [§§ 8-7-90](#) and [25-1-2250](#), a strong presumption arose that the Legislature intended that the long-standing administrative interpretation of the federal acts to form a part of the state statutes as adopted by it. cf.: [Fulghum v. Bleakley](#), 177 S.C. 286, 291, 181 S.E. 30, 32 (1935) Additionally, great weight is usually given to the rulings of administrative bodies having the responsibility, in the original jurisdiction, of enforcing the adopted statute. 82 C.J.S. [Statutes](#) § 371 (1953).

Since the enactment of [§§ 8-7-90](#) and [25-1-2250](#), the Attorney General of South Carolina has consistently and steadfastly maintained that the phrase ‘without loss of pay’ entitles employees of the State or its subdivisions while on military leave of absence to receive full, normal compensation from the State and political subdivisions without regard to the amount which they may receive from military sources.⁴ In [Etiwan Fertilizer Co. v. South Carolina Tax Commission](#), 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950), the Supreme Court held that ‘where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight and should not be overruled without cogent reasons.’ Therefore, the interpretation of the phrase ‘without loss of pay’ by the Attorney General will be accorded weight by the courts and will not be overruled without ‘cogent reasons.’

While there are no South Carolina Court decisions on this question, this issue has been litigated in another jurisdiction. In [Reed v. City of Tulsa](#), 569 P.2d 451, 454 (Okla. 1977), the Supreme Court of Oklahoma was asked to interpret the phrase ‘without loss of pay’, as used in a statute⁵ which is comparatively analogous to our [§ 25-1-2250](#). The Court specifically held this phrase to mean that ‘municipalities [as well as the State and other political subdivisions] are required to pay their officers and employees their full salary, when such officers or employees are properly called to active service with the National Guard or with other reserve components.’

Furthermore, the Court noted that the State has the right to encourage public employees to participate in the National Guard and the national defense system, by making such participation ‘financially advantageous’. Apparently, the Court was of the opinion that the legislative purpose in enacting this statute 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 public employees to join the National Guard or other reserve components. The reasoning of the Oklahoma Court in [Reed](#) is indistinguishable from the position taken by this office in its prior opinions.⁶

CONCLUSION:

It is the opinion of this office that the phrase 'without loss of pay' as used in [Sections 8-7-90](#) and [25-1-2250 of the 1976 Code of Laws of South Carolina](#) means that the public employee or officer is entitled to receive his normal civilian pay, without taking into account any military compensation he may receive.

*4 [Richard B. Kale, Jr.](#)
Senior Assistant Attorney General

Footnotes

- 1 [Section 25-1-20](#) concisely emphasizes this adoption:
The act of Congress approved June 3, 1916, entitled 'An Act Making Further and More Effectual Provisions for the National Defense and for Other Purposes' and all acts presently amendatory thereto, the future amendatory acts thereof being subject to the approval of the State legislature, is hereby accepted by this State and the provisions of said act and amendments thereto are made a part of the military code. (Ref: Titles 32 & 10, United States Code).
- 2 See also 16 Comp. Gen. 1103 (1937); 20 Comp. Gen. 282 (1940); 27 Comp. Gen. 353 (1947); and 24 Comp. Treas. 81 (1917).
- 3 1968 U.S. Code Cong. & Ad. News 4288, 4289 (Sen. Rep. No. 1443); 1947 U.S. Code Cong. & Ad. News 1265, 1266 (H. R. Rep. No. 483).
- 4 Letter to City Attorney (May 9, 1963); Letter to Municipal Officer (April 14, 1972); Letter to Attorney for School District (May 27, 1975); Letter to Member, House of Representatives (March 24, 1975); Letter to Deputy Corporation Counselor, 1977 Op. Atty. Gen. 218 (September 12, 1977); Letter to Airport Director (November 22, 1978); Letter to Chief of Staff, S.C.A.R.N.G. (September 14, 1979); Letter to City Attorney (April 2, 1980).
- 5 [44 OKLA. STAT. 1973 Supp. § 209](#) provides:
'All officers and employees of the state, or a subdivision thereof, or a municipality therein, who are members of the National Guard, shall when ordered by proper authority to active service, be entitled to a leave of absence from such civil employment for the period of such active service, without loss of status or efficiency rating, and without loss of pay during the first twenty (20) calendar days of such leave of absence during any calendar year.' (Emphasis added.)
- 6 See, Footnote 4, supra.
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