

1977 S.C. Op. Atty. Gen. 196 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-262, 1977 WL 24603

Office of the Attorney General

State of South Carolina

Opinion No. 77-262

August 19, 1977

\*1 TO: Colonel William H. Shackelford  
Command Administrative Officer  
Office of the Adjutant General

QUESTION PRESENTED:

Whether Section 25–1–3090, Code of Laws of South Carolina (1976), authorizes commanding officers to impose non-judicial punishment under Article 15, Uniform Code of Military Justice?

CITATION OF AUTHORITIES

Sections 25–1–10, 25–1–30, 25–1–40, 25–1–2650 and 25–1–3090, Code of Laws of South Carolina (1976);

Paragraph 128(c), Manual for Courts-Martial, United States;

Paragraph 5–6, Army Regulation 600–20 (Change 5, October 25, 1974);

Articles 2 and 15, Uniform Code of Military Justice ([10 U.S.C. §§ 802](#) and [815](#), respectively);

Sutherland, Statutory Construction § 53.01 (Cum. Supp. 1977); [Purdy v. Strother](#), 148 S.C. 210, 192 S.E. 159 (1937).

DISCUSSION:

There is no provision in the South Carolina Military Code (Title 25, S.C. Code, 1976) specifically authorizing commanding officers to impose non-judicial punishment under Article 15 of the Uniform Code of Military Justice (hereinafter UCMJ) on officers or enlisted personnel during normal inactive military duty. Section 25–1–40, S.C. Code, 1976, does make Article 15, UCMJ applicable when the Guard is on duty ‘under or pursuant to orders of the Governor or whenever any part of the militia shall be ordered to assemble for state duty.’ In this regard, Section 25–1–10, S.C. Code, 1976, defines ‘state duty’ as duty performed ‘in the event of war, insurrection, invasion, or imminent danger thereof, breaches of the peace, tumult, riot, public disaster, or resistance to process,’ and, therefore, does not include periods of inactive duty training. See also, Section 1–3–440, S.C. Code, 1976 (Governor may call out State militia to avert threatened danger and to maintain peace and good order). Furthermore, Article 2 of the UCMJ ([10 U.S.C. § 802](#)) provides that members of a reserve component are subject to provisions of the UCMJ when they are on ‘federal’ inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to the UCMJ. Therefore, only when members of the South Carolina National Guard are on state or federal duty as indicated above, are commanders authorized by specific statutory provisions to impose Article 15, UCMJ punishment.

The question remains, however, as to whether authority to impose Article 15 punishment during other periods of military duty can be inferred from Section 25–1–3090, S.C. Code, 1976, which authorizes commanding officers in instances of minor infractions of discipline to reprimand, withhold privileges, give extra duty, and to impose other discipline ‘customary in the

Armed Forces of the United States.' (Emphasis added). It is the opinion of this Office that the latter provision does not refer to or incorporate Article 15, UCMJ, but rather refers to and recognizes the inherent authority of a commander, in furthering the efficiency of his command, to use certain nonpunitive measures, such as 'administrative admonitions, reprimands, exhortations, disapprovals, criticisms, censures, reproofs, and rebukes, written or oral, not imposed as punishment for a military offense.' See, Paragraph 128(c), Manual for Courts-Martial, United States (Rev. Ed. 1969). Also, Paragraph 5–6, Army Regulation 600–20 (Change 5, October 25, 1974) provides:

**\*2** Resort to trial by court-martial or to nonjudicial punishment under Article 15, Uniform Code of Military Justice, will not be made for trivial offenses, except when less drastic methods of administering discipline have been tried (see para 128c, MCM, 1969 (Rev.)) and have been unsuccessful. One of the most effective nonpunitive disciplinary measures is extra training or instruction. For example, if an individual appears in an improper uniform, he may be required to correct his attire; if he does not maintain his housing area properly, he may be required to police it; if he has a training deficiency, he may be required to take extra training in subject(s) directly related to the deficiency, as, for example, additional training in leadership, in physical conditioning, in close order drill, in care and preservation of equipment, in preventive maintenance, in environmental protection, and in field and road march exercises . . . The above is not an exclusive listing as to what is and what is not permissible. Such measures have the nature of training or instruction, not punishment, and authority to employ them is part of the inherent powers of command. Care should be exercised, at all levels of command, to insure that training and instruction are not used in an oppressive manner to evade the procedural safeguards applicable to the imposition of nonjudicial punishment under Article 15, UCMJ. Deficiencies that have been satisfactorily corrected by means of training and instruction will not be noted in the official records of the individuals concerned and will be considered as closed incidents. (Emphasis added).

It is important to note that Section 25–1–3090, S.C. Code, 1976, provides for disciplinary action for 'minor offenses,' which offenses the above-cited Army Regulation normally prohibits from being punished under Article 15, UCMJ. Therefore, if Section 25–1–3090 is construed to authorize commanders to impose Article 15, UCMJ punishment for minor offenses, such construction would be directly contrary to the intent of Army Regulation 600–20. Moreover, this construction would cause a further ambiguity and uncertainty in regard to whether nonjudicial punishment imposed on officers should be made pursuant to Sections 25–1–2650, S.C. Code, 1976, (nonjudicial punishment) or Article 15, UCMJ. In this regard, it should be noted that the permissible punishments which can be imposed on officers under Article 15, UCMJ exceeds those permitted under Section 25–1–2650, S.C. Code, 1976, and, therefore, creates a further conflict as to the applicability of these two provisions. Statutes should be construed harmoniously where that can be reasonably done. Sutherland, Statutory Construction § 53.01 (Cum. Supp. 1977). Conflicting provisions should be reconciled, if at all possible, so that both provisions can be given, as far as possible, full force and effect. Purdy v. Strother, 184 S.C. 210, 192 S.E. 159 (1937). By construing Section 25–1–3090 not to authorize imposition of punishment under Article 15, UCMJ, not only is a conflict avoided with Section 25–1–2650, but it also permits the South Carolina National Guard to conform with Army Regulation 600–20 as required by Section 25–1–30, S.C. Code, 1976.

#### CONCLUSION:

**\*3** Section 25–1–3090, S.C. Code, does not authorize commanding officers of the South Carolina National Guard to impose nonjudicial punishment under Article 15, UCMJ.

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