

1978 S.C. Op. Atty. Gen. 177 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-143, 1978 WL 22611

Office of the Attorney General

State of South Carolina

Opinion No. 78-143

July 25, 1978

***1 SUBJECT: Age of Persons, Law Enforcement Officers**

(1) There are no statutory or constitutional provisions which specifically prohibit the hiring of an eighteen year old as a law enforcement officer.

(2) [Article XVII, Section 14 of the South Carolina Constitution](#) did not automatically lower the twenty-one year old age requirement for training by the Criminal Justice Academy.

(3) Only those individuals considered to be regular, salaried law enforcement officers may carry a pistol and unless an individual under twenty-one years of age was eligible by means of a particular exception to serve as a regular law enforcement officer, those individuals under twenty-one years of age in law enforcement may not carry a pistol.

TO: Clifford A. Moyer
Executive Director
Criminal Justice Academy

QUESTION:

(1) May a law enforcement agency hire as a law enforcement officer an individual eighteen years of age and if so, would such officer be empowered and authorized to enforce the laws of this State or any of its political subdivisions?

(2) Is an individual under twenty-one years of age serving in a law enforcement capacity authorized to carry a pistol?

STATUTES AND CASES:

[Section 23-23-40, 23-23-50\(B\)\(7\), 16-23-20, 16-23-30, Code of Laws of South Carolina \(1976\); Art. XVII, Sec. 14, South Carolina Constitution](#); Black's Law Dictionary (4th Ed., 1968); 16 Am. Jur. 2d [Constitutional Law](#), Section 49, 94, 97 (1964); Vol. I, Cooley, [Constitutional Limitations](#), p. 169 (1927); Vol. 1A, Sutherland, [Statutory Construction](#), Section 23.30 (1972); [State v. Wilson](#), 162 S.C. 412, 429, 161 S.E. 104 (1931).

DISCUSSION:

An examination of previous opinions of this Office indicates that this Office has consistently held that there are no state statutory or constitutional provisions which specifically prohibit the hiring of an individual eighteen years of age as a police officer. However this Office has also consistently indicated that there are other factors which may have to be considered in hiring an individual eighteen years of age as a police officer. Several opinions and letters from this Office have indicated that certain law enforcement agencies were subject to the provisions of [Section 23-23-10, et seq., Code of Laws of South Carolina](#), 1976 which relate to the training of law enforcement officer. By such provisions, as currently stated,

No law-enforcement officer employed or appointed on or after January 1, 1972, by any public law-enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of this State or any political subdivision

thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article. [Section 23–23–40](#), supra.

More particularly, reference was made to the requirement of [Section 23–23–50\(B\)\(7\)](#), supra, that a candidate for the Criminal Justice Academy submit with an application to such Academy proof that he is twenty-one years of age. Furthermore, it was indicated that certain municipalities have a population of less than two thousand five hundred (2,500) persons or which did not have at least five fulltime police officers were exempt from the training requirement. However, as you are aware, such exemption has been repealed by an act passed during this term of the Legislature with the effect of requiring completion of training at the Academy within one year after their appointment for all law enforcement officers before they are granted full law enforcement powers, unless exempted by the provisions of [Section 23–23–40](#), supra, which waives the requirement as to certain individuals.

*2 With reference to such requirements for the Academy, you have posed the question of whether the recent constitutional amendment, more specifically [Article XVII, Section 14 of the South Carolina Constitution](#), by which individuals eighteen years of age or older in the absence of other legal disabilities are deemed sui juris and endowed with full legal rights and responsibilities, automatically changes the statutory provision requiring submission of proof that a candidate for the Criminal Justice Academy is twenty-one years of age. Specifically, this amendment states:

Every citizen who is eighteen years of age or older, not laboring under disabilities prescribed in this Constitution or otherwise established by law, shall be deemed sui juris and endowed with full legal rights and responsibilities, provided, that the General Assembly may restrict the sale of alcoholic beverages to persons until age twenty-one. [Article XVII, Section 14, South Carolina Constitution](#).

Black's Law Dictionary (4th Ed., 1968) defines sui juris as;

of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship. Having capacity to manage one's own affairs; not under any legal disability to act for one's self.

In answering the question, an examination must be made as to whether the referenced constitutional amendment is self-executing, thereby amending the statute to conform to the amendment, or not self-executing. Admittedly this Office has in the past determined that this constitutional provision is self-executing as to certain matters, such as eighteen year olds serving as executors, executing contracts, and conveying property. However, it also appears that an individual examination as to the effect of this particular constitutional provision on the age requirement of the Criminal Justice Academy is warranted.

As to the self-executing or non-self-executing status of a constitutional provision,

A constitutional provision is self-executing if no legislation is necessary to give effect to it, and if there is nothing to be done by the legislature to put it in operation. A constitutional provision contemplating and requiring legislation is not self-executing. And a constitutional provision which assumes the existence of certain machinery to carry it out is not self-executing where the machinery previously provided by the legislature is not geared to the carrying out of the particular constitutional mandate.

A constitutional amendment which is not self-executing does not affect existing legislation until the enactment of legislation putting the amendment into effect. 16 Am. Jur. 2d, [Constitutional Law](#), Section 94 (1964)

[Section 23–23–50\(B\)\(7\)](#), supra, makes no reference to majority or adulthood. Therefore, it appears that the age requirement for the Criminal Justice Academy has a meaning other than that of a status of emancipation. Therefore, it is evident that for purposes of this particular statute, statutory change is necessary since the age requirement does

not appear to be associated with the age of majority. Since the statute would have to be altered to conform to the age provisions of the referenced constitutional provision, arguably this provision is not self-executing for purposes of the statute concerning the age requirement of the Criminal Justice Academy.

*3 One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. 16 Am. Jur. 2d Constitutional Law, Section 97 (1964).

There is no apparent mechanism in the constitutional provision which would lower the age requirement of the Criminal Justice Academy. Therefore, a statutory change making such alteration is necessary.

. . . (If . . . (a constitutional provision) . . . fails to indicate its range, and to provide proper machinery, it is not in this particular self-executing and legislation is essential. Vol. I, Cooley, Constitutional Limitations, p. 169 (1927).

Admittedly, ‘. . . an amendment of the constitution must be held to amend existing statute law to agree with such an amendment.’ 16 Am. Jur. 2d, Constitutional Law, Section 49. Therefore, if [Article XVII, Section 14](#) was construed to be self-executing as to the statutory provision at issue here, the provisions are amended by implication. However, ‘. . . where the constitutional provision is not self-executing . . . an inconsistent state statute is not thereby superseded.’ 16 Am. Jur. 2d, Constitutional Law, Section 49 (1964). Furthermore,

. . . in every instance where the repeal is one arising by implication, the constitutional provision or amendment must predicate an irreconcilable conflict and also must clearly show that it was intended to affect existing legislation as well as to operate prospectively upon future legislation. Vol 1A, Sutherland, Statutory Construction, Section 23.20 (1972).

Therefore, although the provision pertaining to admission to the Criminal Justice Academy does conflict with the constitutional amendment, it is not an irreconcilable conflict and is not superseded by the language of the amendment. Furthermore, in [State v. Wilson, 162 S.C. 413, 429, 161 S.E. 104 \(1931\)](#) the South Carolina Supreme Court stated that ‘if any statute may be harmonized with the constitutional provision, it is the duty of the Court to construe the statute so as to give it proper effect.’ Arguably, both the statutory provision questioned here, [Section 23–23–50\(B\)\(7\)](#), *supra*, and [Article XVII, Section 14 of the Constitution](#) may be harmonized with the result that the statutory provision may be given effect.

As to your question regarding individuals under twenty-one years of age in law enforcement carrying pistols, [Section 16–23–20, Code of Laws of South Carolina](#), 1976, states in part that:

*4 It shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol, except as follows:
(1) Regular salaried law enforcement officers of a municipality, county, or the State . . . (Emphasis added).

Therefore, only regular salaried law enforcement officers are permitted to carry a pistol. Additionally, particular provisions of [Section 16–23–30, Code of Laws of South Carolina](#), 1976 state:

It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any pistol to:

. . .

(c) Any person under the age of twenty-one but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Military or R.O.T.C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

. . .

(e) It shall be unlawful for any person covered in . . . (c) . . . to possess or acquire pistols within this State. [Section 16–23–30, Code of Laws of South Carolina](#), 1976.

Therefore, pursuant to this section, an individual must be twenty-one years of age to possess or acquire a pistol. Additionally, there are no exemptions in this latter section exempting an individual under twenty-one years of age who, due to a particular exception, was able to serve as a regular law enforcement officer.

CONCLUSION:

It appears therefore that while there are no statutory or constitutional provisions which specifically prohibit the hiring of an eighteen year old as a law enforcement officer, all law enforcement officers except those specifically exempted by [Section 23–23–40, supra](#), must comply with the minimum basic training requirements established pursuant to [Section 23–23–10, et seq., supra](#), within one year of the date of their appointment in order to be authorized to enforce the laws of this State. The only exceptions to the one year rule are as follows:

(a) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time, or

(b) in the event of the filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period, or

(c) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this article or by standards set by the South Carolina Law Enforcement Training Council. [Section 23–23–40, supra](#).

Furthermore, the requirement that a candidate for the Criminal Justice Academy submit with an application proof that he is twenty-one years of age must be met unless changed by the Legislature. As to the question regarding carrying a pistol, it is the opinion of this Office that only those individuals considered to be regular, salaried law enforcement officers may carry a pistol and unless an individual under twenty-one years of age was eligible by means of a particular exception to serve as a regular law enforcement officer, those individuals under twenty-one years of age in law enforcement may not carry a pistol.

***5** Charles H. Richardson
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