

1974 WL 27705 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 9, 1974

***1 RE: Pay to city employees serving on military duty.**

Robert L. Hawthorne, Jr., Esq.

City Attorney for Abbeville

200 E. Pickney Street

Abbeville, S. C. 29620

Dear Mr. Hawthorne:

Section 44-8 1, S. C. Code of Laws, as amended, provides that officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay.' You inquire whether the word 'pay' means full pay or net pay. In other words, the question is whether the City of Abbeville should pay to employees who are on military leave their full salary, or the difference between their military pay and their full salary.

The word 'pay' is not defined by statute, nor have the courts considered this question. Consequently, the meaning intended by the Legislature must be otherwise determined.

As an intrinsic aid to construction, it is helpful to note that in the statute no express grant of authority is made for the State or any political subdivision to reduce salary payments of personnel on military leave due to receipt by an employee of pay and/or allowances from military sources. As an extrinsic aid to construction, this office considers it significant that both the Office of the Attorney General and the Office of the Adjutant General, among others, have for many years considered these statutes to prescribe full pay and have paid their employees accordingly.

The primary purpose of Section 44-801 is obviously to prevent a government employee from being penalized by required military duty. It is not entirely clear whether the Legislature also intended that receipt of regular pay by those employees who serve their State and Community through military service should be in addition to military pay and allowances. Nevertheless, it is the opinion of this office that this encouragement of military service was intended. Accordingly, in the opinion of this office employees of the City of Abbeville should receive their full salary while on military leave, notwithstanding any compensation paid to them from military sources.

Very truly yours,

John B. Grimball

Assistant Attorney General

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