1974 WL 27515 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 21, 1974

Re: Applicability of Sections 53-41 through 53-47, inclusive, of the South Carolina Code of Laws (Cum. Supp. 1973) to North Myrtle Beach

***1** Chief of Police M. L. Bellamy
North Myrtle Beach, South Carolina 29582

Dear Chief Bellamy:
You have inquired relative to the applicability of Sections 53-41 through 53-47, inclusive, of the South Carolina Code of Laws (Cum. Supp. 1973), which establishes the training program for law inforcement officers and provides the financing therefore, to the municipality of North Myrtle Beach. The crucial facts, as supplied by you, are that the municipality has a population of 1700 persons (as per the last official census) and employs 27 full-time police officers.
Section 53-47 provides as follows:
The provisions of this chapter shall not apply to any municipality having a population of less than two thousand five hundred persons or which does not have at least five full-time police officers. (Emphasis added)

When the disjunctive particle 'or' is used in a statute, it is presumed to be used in its disjunctive sense to the effect that the various members of the sentence as to be taken separately, unless the legislative intent is clearly contrary, unless such a construction would render the provision in question repugnant to other provisions of the statute, or unless it would involve an absurdity or produce an unreasonable result. 1A Sutherland Statutory Construction § 21.14 (4th ed. 1972) 73 Am. Jur. 2d Statutes § 241 (1974); 82 C. J. S. Statutes § 335 (1953). While admittedly in an unrelated setting, the State Supreme Court recognized this general rule in Brewer v. Brewer, 242 S.C. 9, 129, S.E.2d 736 (1963), as follows:
The word 'or' used in a statute, is a disjunctive particle that marks an alternative. The word 'or' used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both. (Citations omitted)

However, it is clear that courts have the power and will change 'or' to 'and' and vice versa, whenever such conversion is required by the context of the enactment, or to save it from unconstitutionality, or, in general, to effectuate the intention of the legislature. This our Court has done on at least two occasions. In Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928), it was held, in order to effectuate legislative intention, that 'and' should be read 'or', and in Fulghum v. Bleakley, 177 S.C. 286, 181 S.E. 30 (1935), that 'or' should read 'and'. In the former the Court quoted with approval the following language from 25 R.C.L. 977:
'The popular use of 'or' and 'and' is so loose and so frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one is read in place of the other in deference to the meaning of the context. Whenever it is necessary to effectuate the obvious intention of the Legislature, the courts have power to change and will change 'and' to 'or,' and vice versa.'

***2** Because nothing has been found within the title of the Act or otherwise to overcome the presumption that the intention of the legislature was otherwise than as expressed, it is the opinion of this office that Section 53-47 presents alternatives; therefore,

since the municipality of North Myrtle Beach has a population of less than 2500 persons, it is not subject to the provisions of Sections 53-41 through 53-47 of the Code, as amended.

I trust you will not hesitate to contact us if we can be of further assistance.
Very truly yours,

Sidney S. Riggs, III
Staff Attorney

1974 WL 27515 (S.C.A.G.)