



ALAN WILSON
ATTORNEY GENERAL

May 6, 2020

William F. Grimsley, EdD.
Secretary
South Carolina Department of Veterans' Affairs
1205 Pendleton Street
Suite 369
Columbia, South Carolina 29201

Dear Dr. Grimsley:

We received your request addressed to Attorney General Alan Wilson seeking an opinion interpreting section 25-11-40 of the South Carolina Code. Specifically, you ask "whether, or not, a county veterans' affairs officer is considered a state employee under this Department."

Law/Analysis

The Legislature recently amended section 25-11-40 of the South Carolina Code (Supp. 2019) along with many of the provisions in article 1 of chapter 11 of title 25 governing state and local veterans' affairs through the passage of Act 26 of 2019. This act primarily converted the Division of Veterans' Affairs, which had been housed under the Office of the Governor, to a department within the executive branch. Section 25-11-40(B) pertains to the appointment and removal of county veterans' affairs officers and now reads:

(B) Subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county, the secretary shall appoint a county veterans' affairs officer for each county in the State, whose term of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until a successor shall be appointed. Qualifications shall be determined by the county legislative delegation upon a majority vote of the Senators representing the county and a majority of the House members representing the county. A county veterans' affairs officer is an at-will employee of the department, subject to removal for cause at any time by the secretary, a majority of the Senators representing the county, and a majority of the House members representing the county.

Prior to Act 26, this provision stated as follows:

Subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county, the

Director of the Division of Veterans Affairs shall appoint a county veterans affairs officer for each county in the State, whose term of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until a successor shall be appointed. A county veterans affairs officer must be a qualified veteran who served on active duty for a period of more than one hundred eighty days and was discharged or released from such active duty with an honorable discharge or if one hundred eighty days or less, was discharged or released from such active duty because of a service-connected disability; otherwise, a county veterans affairs officer may be a qualified nonveteran, if any veteran being considered for the post is not as qualified as a nonveteran being considered for the post. Qualifications shall be determined by the county legislative delegation upon a majority vote of the Senators representing the county and a majority of the House members representing the county. A county veterans affairs officer is subject to removal for cause at any time by a majority of the Senators representing the county and a majority of the House members representing the county.

Prior to Act 26, this Office issued several opinions interpreting section 25-11-40, as well as prior versions of this provision. In 1966, we addressed whether a county veterans' affairs officer, referred to then as county service officers, were state or county officers. Op. Att'y Gen., 1966 WL 8467 (S.C.A.G. Mar. 1, 1966). We analyzed the role of the county service officers under the common law doctrine of the master-servant relationship including "the selection and engagement of the servant or employee, the payment of wages, the power of dismissal, and the power of control of the servant or employee's conduct." Id. We noted, "[t]he really essential element of the relationship is the right to control." Id. Based on these factors, we concluded:

Although the State Service Officer makes the appointments of the various county service officers, he has no power to select them. The County delegations make the selections and the State Service Officer appoints the persons they select. Funds for the payment of salaries of service officers are appropriated by the State, forwarded to the county treasurers who actually pay out the funds. County Service Officers are subject to removal at any time by a majority of the county delegations from the respective counties. The State Service Officer has no control over County Service Officers except to require reports from time to time. He has no authority to tell them what to do or how to perform their duties. Thus, the authority for selecting and removing County Service Officers rests with a majority of the county delegations of the various counties (including the Senator for selection). Apparently, the county delegations have the right of control of the Service Officers' conduct. The State Service Officer has none and exercises none except to require reports from time to time.

William F. Grimsley, EdD.

Page 3

May 6, 2020

In 1977, in regard to the appointment of county veterans' affairs officers, we clarified "the Director of the Department of Veteran Affairs does not have authority to select the county veteran affairs officer, but merely appoints the officer selected by a majority of the Senators and a majority of the House members." Op. Att'y Gen., 1977 WL 24683 (S.C.A.G. Nov. 1, 1977).

In 1984, we were asked to whom a county veterans' affairs officer is accountable. Op. Att'y Gen., 1984 WL 249853 (S.C.A.G. Apr. 11, 1984). We determined because a county veterans' affairs officer may be removed by the county delegation, he or she is accountable to the delegation. Id. Citing to the 1966 opinion, we concluded county veterans' affairs officers are not accountable to the State Director. Id.

In 1998, we addressed whether a county veterans' affairs officer is a county employee for purposes of section 4-9-30(7) of the South Carolina Code subjecting them to county personnel policies and procedures. We acknowledged per our 1966 opinion, county veterans' affairs officers are county officers, but clarified that whether a county veterans' affairs officer is a county employee is a different question. Id. We cited to the Supreme Court's decision in Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988), finding a deputy sheriff is not a county employee because they serve at the pleasure of the sheriff and not the county. Based on Heath, we determined "a county veterans affairs officer serves at the pleasure of the appointing authority," which is the county legislative delegation and not the county. Id. We acknowledged a county veterans' affairs officer may be considered a county employee in other circumstances, but opined he or she is not a county employee for purposes of section 4-9-30(7).

In a 2009 opinion, we concluded because the legislative delegation has the power to remove a county veteran's affairs officer for cause, they likely have the power to suspend such an officer. Op. Att'y Gen., 2009 WL 5205401 (Dec. 2, 2009).

In 2011, we issued two opinions dealing with county veterans' affairs officers. In the first opinion issued in October of 2011, we reaffirmed our prior determinations stating:

[A] county veterans' affairs officer is county officer serving at the pleasure of the county delegations. A county veterans' affairs officer is thus accountable solely to this authority, and may be removed by a majority of the Senators and House members serving on the county delegation. Because a county veterans' affairs officer is appointed by an authority outside county government, he is not a "county employee" for purposes of a county's personnel policies pursuant to § 4-9-30(7).

Op. Att'y Gen., 2011 WL 5304074 (S.C.A.G. Oct. 21, 2011). Additionally, we concluded

it is the opinion of this office that a county veterans' affairs officer, not a county administrator or council, is responsible for the administration of his

William F. Grimsley, EdD.

Page 4

May 6, 2020

office, including his employees. Thus, while employees of a county veterans' affairs officer are considered "county employees" and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of the county veterans' affairs officer. Further, because these employees are employed "under the direction of . . . an official appointed by an authority outside county government," a court would likely conclude they are not county employees entitled to all rights and privileges established by county policies.

Id. (quoting S.C. Code Ann. § 4-9-30(7)).

In November 2011, we were asked a follow up question as to whether a county veterans' affairs officer would be subject to state personnel policies and if not, whether the delegation may adopt a grievance policy for veterans' affairs officers. Op. Att'y Gen., 2011 WL 6120333 (S.C.A.G. Nov. 18, 2011). Relying on our 1966 opinion determining a county veterans' affairs officer is a county officer, we determined they could not then simultaneously be state officers. Id.

It is the opinion of this office, therefore, that although the county veterans' affairs officer is not subject to a county's grievance policy, and he is accountable to the delegation that selects him in accordance with § 25-11-40 (B), the county veterans' affairs officer remains a county officer rather than a state officer. He thus would not be subject to State personnel policies in this regard. See §§ 8-11-210 et seq. [establishing a State Personnel Division under the State Budget and Control Board . . . "to administer a comprehensive system of personnel administration responsive to the needs of the employees and agencies and essential to the efficient operation of State Government. It shall be applicable to all State agencies, departments, institutions, boards, commissions and authorities, except as may hereinafter be exempted"].

Id. We also determined the delegation lacked legislative authority to adopt grievance policies.

Id.

"This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law." Op. Att'y Gen., 2009 WL 959641 (S.C.A.G. Mar. 4, 2009). Based on our 1966 opinion, we previously opined that county veterans' affairs officers are not state employees. However, in light of the changes to article 1 and more specifically section 25-11-40, we must reconsider our prior opinions. Using the criteria set forth in our 1966 opinion for the determination of a master-servant relationship, we will review who appoints, who pays, who has the authority to dismiss, and most importantly who has the authority to control county veterans' affairs officers to determine what impact the changes made in Act 26 have on the status of county veterans' affairs officers.

Pursuant to the current version of section 25-11-40, the legislative delegation retains the authority to appoint county veterans' affairs officers. Section 25-11-45 of the South Carolina

William F. Grimsley, EdD.

Page 5

May 6, 2020

Code (Supp. 2019) governs the funding of county veterans' affairs offices. While Act 26 amended this provision, it remains almost identical to the prior version of the statute and continues to provide that funding from comes from appropriations by the Legislature, which are payable directly to the county treasurer's office by the State Treasurer. S.C. Code Ann. § 25-11-45. Based on this provision, we initially presume county treasurers will continue to pay county veterans' affairs officers' salaries. Thus, the amendments to sections 25-11-40 and 25-11-45 do not appear to impact who appoints and who pays county veterans' affairs officers.

However, Act 26 changed who has the authority to remove a county veterans' affairs officer. Under the prior version of section 25-11-40, "a majority of the Senators representing the county and a majority of the House members representing the county" could remove a county veterans' affairs officer. S.C. Code Ann. § 25-11-40(B)(2007). Section 25-11-40(B) now includes the secretary in the removal process stating the secretary, along with the delegation, has the power to remove a county veterans' affairs officer. Section 25-11-50 of the South Carolina Code (Supp. 2019) pertaining to the relationship between the secretary and the county veterans' affairs officers appears to be identical to the previous version of this provision mandating the secretary to establish methods and procedures and on occasion requiring reports from county veterans' affairs officers. In our 1966 opinion, we determined this provision did not give the State Service Officer authority to control County Service Officers. Op. Att'y Gen., 1966 WL 8467 (S.C.A.G. Mar. 1, 1966). However, because the secretary now has a role in the removal of a county veterans' affairs officer, based on our 1984 opinion finding the power to remove also implies accountability, we believe a court could find this change allows the secretary control over county veterans' affairs officers. Op. Att'y Gen., 1984 WL 249853 (Apr. 11, 1984).

Looking at the amendments made to article 1, we also must consider the Legislature's intent regarding these changes. As our Supreme Court instructed in Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. at 85, 533 S.E.2d at 581 (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)).

Giving the secretary authority in the removal process is one indication the Legislature sought to give the secretary more control over county veterans' affairs officers. In addition, the amended language used in section 25-11-40(B) indicates the intent of the Legislature to treat county veterans' affairs officers as state employees. Currently, section 25-11-40(B) designates a county veterans' affairs officer as "an at will employee of the department." As previously mentioned, the Department of Veteran's Affairs (the "Department") is a legislatively created department within the executive branch. By designating county veteran's affairs officers as employees of the Department, a state agency, indicates the Legislature's intent to treat county veterans' affairs officers as state employees. In conversations with Senate staff, we understand this was indeed the intent of the legislation.

William F. Grimsley, EdD.
Page 6
May 6, 2020

This understanding is further supported by section 4 of Act 26, which the Legislature included not as a statutory provision, but as a coordinating instruction. 2019 S.C. Acts 26 § 4.

(A) All classified or unclassified personnel employed by these offices on the effective date of this act, either by contract or by employment at will, shall become employees of the Department of Veterans' Affairs, with the same compensation, classification, and grade level, as applicable. The Department of Administration shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations.

2019 S.C. Acts 26 (emphasis added). We presume use of the term “these offices” refers to both the state and county offices. This provision further indicates the Legislature’s intent for county veterans’ affairs officers to become “employees of the Department of Veterans’ Affairs” and indicates they will now be paid through the Department of Administration. As such, we believe the Legislature intended for county veterans’ affairs officers to be considered state employees.

In addition to the question you presented in your letter, in further conversations with you, we understand you wish to know what authority the secretary has over county veterans’ affairs officers and what it means to be an “at will” employee of the Department. As explained above, the amendments to section 25-11-40 indicate county veterans’ affairs officers serve not just at the pleasure of the delegation, but also at the pleasure of the secretary as the secretary, jointly with the delegation, has authority to remove county veterans’ affairs officers. As such, we presume county veterans’ affairs officers are accountable to the secretary as well as the delegation. See Op. Att’y Gen., 1984 WL 249853 (S.C.A.G. Apr. 11, 1984).

Prior to Act 26, county veterans’ affairs officers could only be removed for cause. S.C. Code Ann. § 25-11-40(B) (2007). Section 25-11-40(B) now states they are “at will” employees. The Court of Appeals defines “at will” employment to mean “an employee can quit his or her job at any time, with or without giving notice, and with or without a particular reason or cause. Likewise, employment of an employee may be terminated by the company on the same basis.” Jones v. Gen. Elec. Co., 331 S.C. 351, 359, 503 S.E.2d 173, 178 (Ct. App. 1998). Therefore, we would presume a county veterans’ affairs officer can be removed from their position with or without a particular reason or cause. However, section 25-11-40(B) continues on to state a county veterans’ affairs officer is “subject to removal for cause,” indicating cause is required for removal.

Conclusion

Upon review of the amendments to article 1 of chapter 11 of title 25, we believe the Legislature intended to treat county veterans’ affairs officers as employees of the Department of Veteran’s Affairs. Based on these amendments and in particular the amendments to section 25-11-40 of the South Carolina Code, we now overrule our prior opinions determining county veterans’ affairs officers are county officers. In addition, we believe by giving the secretary authority to make a

William F. Grimsley, EdD.
Page 7
May 6, 2020

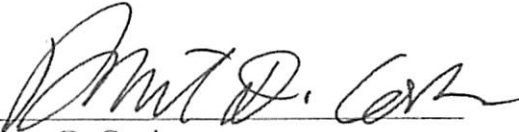
joint decision with the delegation to remove county veterans' affairs officers, the Legislature intended for county veterans' affairs officers to be accountable to the secretary in addition to the delegation. Moreover, while section 25-11-40 designates county veterans' affairs officers as "at will" employees of the Department, it specifies a county veterans' affairs officers be remove "for cause." Until further clarification from the Legislature, we recommend the secretary and the delegation only remove county veterans' affairs officers for cause.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General