

1973 WL 26729 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1973

***1 Re: No. 195—Military**

Honorable Walter J. Bristow, Jr.
Senator
District No. 7
1306 Main Street
Columbia, South Carolina 29201

Dear Senator Bristow:

You have requested that we advise you as to whether or not a school district in this State may deduct from a school teacher's salary an amount equal to the number of school days lost by the teacher as a result of the teacher having undergone training in the National Guard. Specifically, you have in mind a situation where a public school teacher sustained a loss of pay for having missed nine school days because he was receiving training on those days with the National Guard.

Section 44-861 of the South Carolina Code of Laws, as amended, provides in part:

All . . . employees of this State or any political subdivision thereof who are . . . members of the South Carolina National Guard . . . shall be entitled to leave of absence from their respective duties without loss of pay . . . for a period not exceeding fifteen days in any one year during which they may be engaged in training . . . See also, Code of Laws of South Carolina, § 44-168, as amended.

A school district, obviously, is a 'political subdivision' of this State [see, 32A WORDS AND PHRASES Political Subdivision at 526] and is subject to the provisions of Section 44-861 as well as Section 44-168 unless there is a statute which expressly exempts a school district from purview of those statutes. There is no such statute; hence, a school teacher that is a member of the National Guard, as any other public employee who is a member thereof, is entitled to a leave of absence from his respective duties as a teacher without loss of pay for a period not exceeding fifteen days in any one year during which he may be engaged in training with the National Guard.

Where, then, a public school teacher, who is a member of the National Guard, underwent training in the National Guard for a nine-day period, the school district could not properly deduct from his salary the amount which he would have earned had he taught on those days unless the teacher had, within the year, previously been accorded fifteen days of military leave for training purposes.

With kindest personal regards.

Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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