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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

June 6, 2002

Mr. William Kelly, Jr.  
South Carolina Forestry Commission  
P.O. Box 29207  
Columbia, South Carolina 29221

**Re: S.C. Code Ann. §23-1-225**

Dear Mr. Kelly:

In a letter to this Office, you have requested an opinion on the scope of S.C. Code Ann. §23-1-225. That Section provides as follows:

Upon retirement, state law enforcement officers may retain their commissions in retired status with all rights and privileges, including the right to retain their service weapons issued while serving in active duty status.

By way of background, you indicate that the "South Carolina Forestry Commission does not desire to continue any law enforcement commissions of retirees to eliminate any risk of exposure to litigation against the Commission and/or the State of South Carolina for any actions that retirees may take with 'their rights and privileges of their commissions in retired status.' The Commission would be agreeable to allowing the retirees in law enforcement to retain their service weapons issued while serving in active duty as appreciation for their years of service."

Given this background, you ask the following questions: "[d]oes the section allow for retirees to retain their assigned weapon alone? ... [and] ... are the rights and privileges in retired status the same as with other retirees?" In a telephone conversation regarding your request, you indicated that the Commission's main concern was the potential for liability should a retiree take some law enforcement action based on the retention of their commission as a state law enforcement officer.

In responding to your concerns, a distinction must be drawn between the commission a law enforcement officer receives upon being hired by an agency and his or her certification as a law enforcement officer. A law enforcement officer is certified by the South Carolina Department of Public Safety after meeting and then maintaining certain standards and qualifications. Section 23-6-430 provides that certification by the Department of Public Safety is a prerequisite to the law enforcement officer's authority to "... enforce the laws or ordinances of this State or any political

*Rembert C. Dennis*

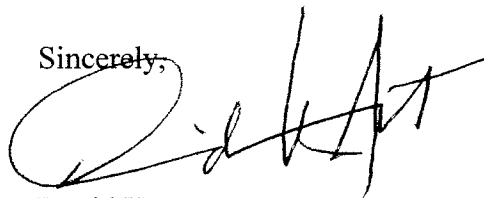
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subdivision thereof ... ” In order to maintain certification, a law enforcement officer must maintain his employment. In fact, for purposes of certification, the definition of “[l]aw enforcement officer’ means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions ... .” See S.C. Code Ann. §23-6-400(D)(1) (Emphasis added). Therefore, an individual must be employed by a state or local agency to be considered a law enforcement officer. Further, Department of Public Safety regulations provide that “[a]ll law enforcement agencies and other employers of law enforcement officers are required to notify the Department [of Public Safety] when an officer leaves the employment of the agency/employer, regardless of the reason for the separation, and return to the Department [of Public Safety] any certification card which has previously been issued to the officer.” Retirement would qualify as a separation of employment resulting in the return or lapse of the law enforcement officer’s certification.

Accordingly, while Section 23-1-225 may allow a retired state law enforcement officer to retain his or her commission, it does not allow the officer to retain his or her authority to “... enforce the laws or ordinances of this State or any political subdivision thereof ... ” as if he or she remained a certified law enforcement officer. Therefore, the rights and privileges of a commission in retired status would not include law enforcement authority and a state agency, such as the Forestry Commission, would not be granting the retiree law enforcement authority simply by allowing him or her to retain the commission.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'David K. Avant', written over a large, stylized circular flourish.

David K. Avant  
Assistant Attorney General

DKA/an