

December 13, 2007

The Honorable Dennis Moss
Member, House of Representatives
306 Silver Circle
Gaffney, South Carolina 29340

Dear Representative Moss:

In a letter to this office you referenced that S.C. Code Ann. § 23-11-110 establishes the qualifications for sheriff. Included in such list of qualifications is the requirement that the individual

(A)(5) have

(a) obtained a high school diploma, its recognized equivalent in educational training as established by the State Department of Education, and have at least five years experience as a certified law enforcement officer; or

(b) obtained a two-year associate degree and three years' experience as a certified law enforcement officer; or

(c) obtained a four-year baccalaureate degree and one year's experience as a certified law enforcement officer; or

(d) served as a summary court judge for at least ten years.

For purposes of this section, a "certified law enforcement officer" is a person who has been issued a certificate as a law enforcement officer pursuant to Section 23-6-400(D)(1). (emphasis added).

By subsection (B)(2)(d), the individual must further specify “the number of years' experience the person has had as a certified law enforcement officer when applicable....”

S.C. Code Ann. § 23-6-400(D)(1), a statute that has since been repealed, stated that

“Law enforcement officer” means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

The Honorable Dennis Moss
Page 2
December 13, 2007

Section 23-6-400(D)(1) was repealed by Act No. 317 of 2006. Referencing the fact that Section 23-6-400(D)(1) was repealed, you have questioned with regards to the qualifications for sheriff, what does the term “certified law enforcement officer” mean?

Also included in Act No. 317 was a provision codified as S.C. Code Ann. § 23-23-10(E)(1) which defines “law enforcement officer” in exactly the same terms as set forth above by former Section 23-6-400(D)(1). It is generally recognized that “[t]he repeal and simultaneous reenactment of substantially the same statutory provision are to be construed, not as an implied repeal of the original statute, but as an affirmance and continuation thereof.” State v. Charron, 351 S.C. 319, 325-326, 569 S.C.2d 388, 392 (Ct.App. 2003). Also, as stated in Slocumb v. State, 337 S.C. 46, 49, 522 S.E.2d 809, 811 (1999), “[w]hen the legislature reenacts the same provision and provides for its taking effect at the same time as the repeal of the old statute, it is presumed the legislature intended to continue the provision in force without interruption.” See also: South Carolina Mental Health Commission v. May, 226 S.C. 108, 83 S.E.2d 713 (1954); Op. Atty. Gen. dated June 7, 1982 (“...where a statute is repealed by a new statute which relates to the same subject matter and which reenacts substantially the provisions of the repealed statute, and the repeal and reenactment occur simultaneously, ‘the repealing act should not be construed as putting an end to all proceedings under the prior act if any other construction is possible as to such rights as have vested under the act repealed.’” Consistent with such, in the opinion of this office, reference may be had to the provisions of Section 23-23-10(E)(1) to define the term “certified law enforcement officer” for purposes of Section 23-11-110. Again, the language is the same for Section 23-23-10(E)(1) and former Section 23-6-400(D)(1).

You next questioned whether a reserve police officer would be considered a certified law enforcement officer for purposes of Section 23-11-110. The term “reserves” for purposes of being considered a “reserve police officer” is defined by S.C. Code Ann. § 23-28-10(A) as “...persons given part-time police powers without being regularly assigned to full-time law enforcement duties.” Section 23-28-70 (A) states that “[r]eserves shall serve and function as law enforcement officers only on specific orders and directions of the chief or sheriff.” Subsection (C) and (D) states that

[a] person appointed as an auxiliary or reserve police officer after January 1, 1996, shall perform his duties while accompanied by a full-time, certified South Carolina police officer or deputy sheriff ...Reserves shall not assume full-time duties of law-enforcement officers without complying with all requirements for full-time officers. (emphasis added).

S.C. Code Ann. § 23-23-40 states that

[n]o law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or

The Honorable Dennis Moss
Page 3
December 13, 2007

ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council....

S.C. Code Ann. § 23-23-60(A) states that

[a]t the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter.

As to the training of reserve officers, S.C. Code Ann. § 23-28-80 states

[a]ny reserve who has been in active status for at least two years who desires to become a full-time law enforcement officer may, upon application and completion of other existing requirements, be accepted at the South Carolina Criminal Justice Academy for such additional hours of training as deemed necessary.

Noting these limitations and distinctions as to reserve police officers as to their certification and training, in the opinion of this office, there is a distinction between a reserve police officer and a certified law enforcement officer. As a result, in the opinion of this office, a reserve police officer would not be considered a certified law enforcement officer for purposes of Section 23-11-110.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General