



HENRY McMASTER
ATTORNEY GENERAL

August 2, 2010

The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
Laurens, South Carolina 29360

Dear Representative Pitts:

We understand you desire an opinion of this Office concerning “whether South Carolina Law allows one individual to be appointed as the county veterans affairs officer for multiple counties.” You state in your letter to our Office that

[t]o save the taxpayers’ money, the Laurens and Greenwood Counties’ delegations have chosen to appoint the same individual to serve as the veterans affairs officer for both counties. By doing this, the Laurens/Greenwood veterans’ affairs office has been able to employ staff members, and the veterans in the area have been better served. Unfortunately, it has come to my attention that there is some concern with having only one veterans affairs officer for both counties. As such, I am seeking an opinion from your office as to whether or not the South Carolina law allows for one person to serve as the county veterans affairs officer for multiple counties.

Law/Analysis

As you state in your letter, section 25-11-40(B) of the South Carolina Code (2007) provides for the appointment of county veterans affairs officers. This provision states:

(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 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.

S.C. Code Ann. § 25-11-40.

We must employ the rules of statutory interpretation to determine whether or not section 25-11-40 allows for one individual to serve as the county veterans affairs officer for two counties. As our Supreme Court explained in SCANA Corp. v. South Carolina Department of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

Section 25-11-40 is clear that veterans affairs officers must be appointed for each county in the State. Thus, we gather the Legislature’s intent that each county should be served by a veteran’s affairs officer. However, section 25-11-40 does not specifically prohibit the same person from serving two different counties. In addition, while serving as a veterans affairs officers could be considered an office for purposes of dual office holding, section 8-1-130 of the South Carolina Code (Supp. 2009) specifically exempts veterans affairs officers from the prohibition on dual office

holding found in article XVII, section 1A of the South Carolina Constitution (2009). Accordingly, we do not believe that section 25-11-40 or the constitutional prohibition on dual office holding prohibit one individual from serving as the veterans affairs officer for both Laurens and Greenwood Counties.

However, an issue could arise due to this individual's lack of residency in both counties. Pursuant to section 25-11-40, the only statutory qualification to serve as a veterans affairs officer concerns the individual's status as a veteran. This provision does not place a residency requirement on individuals serving as veterans affairs officers. Section 25-11-40 states that qualifications for holding a position as a veterans affairs officer are to be determined by the county's legislative delegation. However, unless the legislative delegation for one of the counties places a residency requirement on candidates for this position, we would presume that veterans affairs officers are not required to be residents of the county they serve.

Nonetheless, an argument can be made that a residency requirement is implied with respect to county veterans affairs officers pursuant article XVII, section 1 of the South Carolina Constitution (2009). This provision states: "No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector" S.C. Const. Art. XVII § 1. Section 7-5-120 of the South Carolina Code (Supp. 2009) provides the requirements of a qualified elector. Among these requirements is the requirement that the elector be "a resident in the county and in the polling precinct in which the elector offers to vote." S.C. Code Ann. § 7-5-120. Our Supreme Court interpreted article XVII, section 1 to imply a residency requirement even when one is not specified by the Legislature. McLure v. McElroy, 211 S.C. 106, 120, 44 S.E.2d 101, 108 (1947), overruled on other grounds by Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997).

In several opinions, this Office concluded that based on article XVII, section 1 and the Court's findings in McLure, an implied residency requirement existed for various appointed officers.

In a 1985 opinion, we considered whether a residency requirement existed for a city housing authority commissioner. Op. S.C. Atty. Gen., August 1, 1985. We noted that the statute relating to the appointment of housing commission members was silent as to any residency requirement. Id. However, based on article XVII, section 1 of the Constitution, we concluded that because commissioners are city officers they must be qualified electors of the city. Id. We came to similar conclusions with regard to members of city planning commissions, notaries, and recreation commission members in other opinions issued by this Office. Ops. S.C. Atty. Gen., May 21, 2007; March 5, 1993; July 7, 1999.

Prior opinions of this Office have concluded that county veterans affairs officers are officers exercising sovereign power of the State for purposes of article XVII, section 1A of the South Carolina Constitution (2009). Ops. S.C. Atty. Gen., May 9, 1989; December 12, 1986. Accordingly, we believe a county veterans affairs officer would likely be an officer for purposes of article XVII, section 1. Therefore, a court could find that county veterans affairs officers must be residents of the county they serve. Because the same person serving two different counties could not satisfy this

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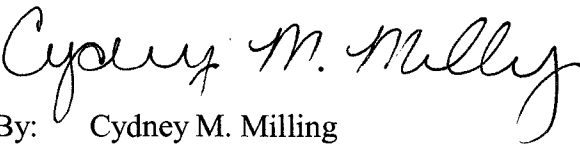
requirement, we must advise you that a court could find that one individual cannot serve as the veterans affairs officer for both Laurens and Greenwood Counties.

Conclusion

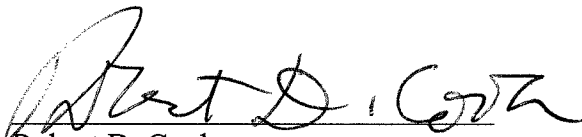
The statute governing county veterans affairs officers does not appear to prohibit one individual from serving as a veterans affairs officer for two counties. Additionally, we do not believe that such service by one individual will run afoul of the prohibition on dual office holding found in the South Carolina Constitution. However, our Courts have interpreted article XVII, section 1 of the South Carolina Constitution as requiring all governmental officers, elected or appointed, to be residents of the area they serve. Because we believe county veterans affairs officers would be viewed as officers for purposes of article XVII, section 1, a court could find an implied residency requirement for this position. Accordingly, we must advise you that if one person were to serve as the county veterans affairs officer for both Laurens and Greenwood Counties, a court could find that this individual has failed to satisfy the qualifications of his or her office for the county in which he or she is not a resident.

Very truly yours,

Henry McMaster
Attorney General


By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General