

# The State of South Carolina



## Office of the Attorney General

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August 7, 1989

The Honorable James Lee Foster  
Sheriff, Newberry County  
P. O. Box 247  
Newberry, South Carolina 29108

Dear Sheriff Foster:

You have requested an opinion from this Office as to two questions. First, may two of your officers, who were dismissed from the Academy but who also have not been employed for one year, "legally perform law enforcement duties until they pass the requirements mandated by law while still remaining in the one year time frame?" Second, "[i]f they cannot perform duties of an officer, should they be reassigned to desk duty or be terminated?" I shall address these two questions separately.

Based upon your letter, it is my understanding that these individuals were appointed as law enforcement officers prior to July 1, 1989. As a result, they would be governed by S. C. Code § 23-23-40 prior to its amendment by Act No. 60 of 1989. Such provision states:

No law enforcement officer employed or appointed on or after January 1, 1972, by any public law enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article. Should any such person fail to successfully complete such basic training requirements within one year from his date of employment, he shall not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has successfully completed such basic training requirements. He shall not be eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor shall he be eligible for any

compensation by any law enforcement agency for services performed as an officer 1/

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1/ As amended by Act No. 60 of 1989 this statute now reads:

No 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 ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment the council must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and within three working days of the notice the firearms qualification program as approved by the council must be provided to the newly hired personnel. If the firearms qualification program approved by the council is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the powers of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified.

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In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walter v. Walter, 282 S.C. 165, 318 S.E.2d 14 (1984). The legislature is presumed to have fully understood the import of the words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

The language of Section 23-23-40 is clear and unambiguous. An officer has up to one year to be certified.<sup>2/</sup> During that one year "grace" period the officer is empowered to perform the duties of a law enforcement officer, unless the officer is otherwise disqualified.<sup>3/</sup>

Your second question deals with what actions you should take if an officer is not certified or otherwise exempted. This Office has consistently opined that the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff. See: Opinions dated May 15, 1986, August 14, 1985 and January 24, 1985. Additionally, this Office has opined that since the office of sheriff is a constitutional office, it can be regulated only in a manner prescribed by the State Constitution. See: Article V, Section 24 of the South Carolina Constitution. Therefore, the matter of reassigning such officers or terminating them remains a matter within your discretion. As noted, Section 23-23-40 provides:

Should any such person fail to successfully complete such basic training requirements within one year from his date of employment, he shall

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<sup>2/</sup> Section 23-23-40 provides that the South Carolina Law Enforcement Training Council may grant exceptions to the "one-year" rule under certain circumstances. These exceptions remain under the new amendment to such provision.

<sup>3/</sup> As noted, under the amended Section 23-23-40 an individual may not perform law enforcement duties "involving the control or direction of members of the public or exercising the power of arrest" until he has successfully completed the referenced firearms program unless otherwise exempted.

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not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has successfully completed such basic training requirements. He shall not be eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor shall he be eligible for any compensation by any law enforcement agency for services performed as an officer ....

This language is clear and unambiguous.

Thus, while the sheriff has absolute authority as to the hiring and discharge of a deputy sheriff, S.C. Code § 23-23-40 provides that the deputy must be certified (or otherwise exempted) to have law enforcement authority.

I hope the above information is helpful to you.

Sincerely yours,



Charles W. Gambrell, Jr.  
Deputy Attorney General

CWGJr/an

REVIEWED AND APPROVED BY:



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