



ALAN WILSON  
ATTORNEY GENERAL

October 13, 2015

The Honorable Shane Massey  
Senator, District No. 25  
P.O. Box 142  
Columbia, SC 29202

Dear Senator Massey:

Attorney General Alan Wilson has referred your letter dated September 17, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issues** (as quoted from your letter):

- 1) *Whether a person currently serving on active duty in the United States military is a "nonveteran" per [S.C. Code Section 25-11-40 regarding the appointment of county veterans' affairs officers] and if so,*
- 2) *whether the Director of the Division of Veterans Affairs (the "Director") can refuse to appoint the county legislative delegation's recommendation of a nonveteran candidate after the delegation has considered veteran and nonveteran candidates.*

*Specifically, the statute's [S.C. Code Section 25-11-40] relevant subsections state:*

- A. *For the purpose of this section, "veteran" means a person 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 service active duty because of service-connected disability.*
- 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.*

...

*Edgefield County is currently seeking to fill a vacancy for a county veterans affairs officer. Out of a group of thirteen potential candidates, including veterans and nonveterans, the county legislative delegation evaluated the candidates' qualifications and unanimously selected an individual who is on active duty with the United States Army as the most qualified candidate. The delegation then made the required recommendation to the Director for appointment. The Director refused to appoint the delegation's recommended candidate because the Director believes (1) the candidate is neither a veteran nor a nonveteran since he is on active duty and (2) a nonveteran cannot be appointed if there is a qualified veteran available for appointment. I believe these to be incorrect interpretations of the statute.*

*I understand the statute to create two categories of candidates: veterans and nonveterans. Therefore, it appears that a candidate who does not meet the definition of "veteran" in § 25-11-40(A) must be a "nonveteran." Additionally, it seems clear to me that the appointment procedure in § 25-11-40(8) authorizes the legislative delegation to determine the qualifications for the position and to select a nonveteran if the delegation finds the nonveteran to be more qualified for the post than any veteran candidate. I see no statutory basis for the Director to reject a recommendation made by the delegation.*

**Short Answers:**

- 1) Any person who does meet the statutory definition of "veteran" in the context of S.C. Code § 25-11-40 must by default be a nonveteran.<sup>1</sup>
- 2) When the county legislative delegation makes a recommendation for the county veterans' affairs officer pursuant to S.C. Code § 25-11-40 after considering the qualifications pursuant to the statute, even when the delegation recommends a nonveteran candidate over a veteran candidate (as long as the delegation determines that the nonveteran candidate is more qualified), the Director must appoint the delegation's recommendation as the county veterans' affairs officer.

**Law/Analysis:**

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Therefore, let us look to the legislative intent of the statute in your questions. Regarding the Office of the Veteran's Affairs within the Governor's Office, South Carolina Code § 25-11-10 states that:

---

<sup>1</sup> This interpretation has no intention to transfer any status of a veteran or nonveteran for military purposes or otherwise but is limited to the interpretation of this statute in this legal opinion.

A Division of Veterans' Affairs in the Office of the Governor is hereby created for the purpose of assisting ex-servicemen in securing the benefits to which they are entitled under the provisions of federal legislation and under the terms of insurance policies issued by the federal government for their benefit. This division shall be under the direct supervision of a panel consisting of the Governor as chairman, the Attorney General for the purpose of giving legal advice, and the Adjutant and Inspector General.

S.C. Code § 25-11-10. It appears from a plain reading of the statute, the Veterans' Affairs Division within the South Carolina Governor's Office was created to help "ex-servicemen" get federal benefits for which they qualify. In regards to the relationship between the Director and the county veterans' affairs officers, the law directs the Director to "maintain contact and close cooperation ... provide assistance, advice and instructions" and may even require reports from county veterans' affairs officers.<sup>2</sup> S.C. Code § 25-11-50.

Thus, looking at your first question of whether someone in active duty in the United States military is a "nonveteran" per S.C. Code Section 25-11-40 regarding the appointment of county veterans' affairs officers, let us examine the statute. The statute defines a veteran as "a person 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 service active duty because of service-connected disability," but does not define a "nonveteran." S.C. Code § 25-11-40. The rule of statutory construction known as "*expressio unius est exclusio alterius*" or "*inclusio unius est exclusio alterius*" meaning "to express or include one thing implies the exclusion of another, or of the alternative" would apply here. See, e.g., Op. S.C. Att'y Gen., 2013 WL 5763370 (October 10, 2013); 2005 WL 1024601 (April 29, 2005) (citing Hodges v. Rainey, 341 S.C. at 86, 533 S.E.2d at 582 (2000)). Utilizing this rule of statutory construction, anyone not listed within the statutory definition of "veteran" within this statute would be a nonveteran by default.

In regards to your second question, this Office has previously opined that the Director of the Division of Veterans Affairs may only appoint the officer chosen by the Legislative delegation and does not have the authority to select the candidate of his own choosing. Op. S.C. Att'y Gen., 1977 WL 24683 (November 1, 1977) (citing Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 226 (1952); Brown v. Smith, 188 S.C. 75, 198 S.E.2d 184 (1938); Op. S.C. Att'y Gen., 1984 WL 249853 (April 11, 1984)). The statute clearly reads that "[s]ubject 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." S.C. Code § 25-11-40 (emphasis added). The use of the word "shall" is indicative of a mandatory, not a discretionary requirement by the Legislature. Collins v. Doe, 352 S.C. 462, 574 S.E.2d 739 (2002). In the context that the Director is serving a mandatory duty prescribed by statute where he is bound by the recommendation of the Legislators, the Director is performing more of a ministerial duty except where there is no recommendation by the Legislators. Moreover, the statute is clear in stating that "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" and leaves the county legislative delegation in charge of making the qualification determinations. S.C. Code § 25-11-40. Conversely, your letter seems to indicate the statute is being interpreted to read that "a county veterans affairs office must be a qualified

---

<sup>2</sup> Please note 2015 S.C. House Bill 3776 was introduced concerning the Director and reports from the county veterans' affairs officers.

veteran” and seems to stop there. As we stated concerning statutory construction, the statute must be read in its context. The definition of a “veteran” is clearly defined in paragraph (A) and again is repeated in the requirements in paragraph (B) of the statute as a limitation on who qualifies as a “veteran.” Id. There would be no need to have the exception in paragraph (B) to allow a qualified nonveteran where the nonveteran is more qualified than the “veteran” if only a “veteran” could be appointed. Thus, we will apply the principle that the Legislature did not intend to do a futile thing by including the language allowing the appointment of a nonveteran who was more qualified than a veteran. See Op. S.C. Att’y Gen., 1984 WL 159859 (May 9, 1984) (citing St. ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964)).

Please also note that this Office has previously opined that a county veterans’ affairs officer would be considered an office of honor or profit with sovereign power of the State pursuant to the South Carolina Constitution Article XVII, Section 1. See Op. S.C. Att’y Gen., 2010 WL 3505054 (August 2, 2010).<sup>3</sup> That would also mean that in order to hold an office, a court would likely find the candidate must meet the requirements of an officeholder (which entails having the qualifications of an elector including residency) in addition to the qualifications set by the county legislative delegation, even where the position is not an office for dual office holding purposes. S.C. Const. art. XVII § 1. This Office made such a conclusion regarding residency for a county veterans’ affairs officer in a previous opinion. See Op. S.C. Att’y Gen., 2010 WL 3505054 (August 2, 2010).

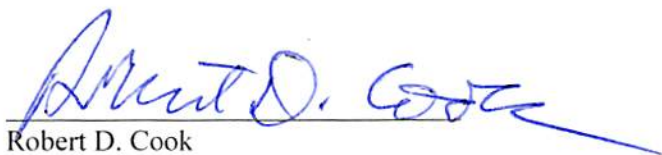
**Conclusion:** For all the above reasons, this Office agrees with your interpretation of the statute. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. S.C. Code § 15-53-20. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

---

<sup>3</sup> However, this Office has also previously opined that a county veterans affairs officer would not be an office for dual office purposes, as it is specifically exempted in S.C. Code § 8-1-130. Op. S.C. Att’y Gen., 2006 WL 981699 (March 17, 2006).