

1979 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-110, 1979 WL 29114

Office of the Attorney General

State of South Carolina

Opinion No. 79-110

September 14, 1979

***1 SUBJECT: Armed Forces, Teachers, Education, School Districts, Leaves of Absence, Statutes**
[Section 59-1-400 of the 1976 Code of Laws of South Carolina](#) cannot be construed so as to allow a school district to charge a teacher's participation time in National Guard annual training against the teacher's annual sick leave.

TO: Colonel William H. Shackelford
Chief of State
S.C.A.R.N.G.

QUESTION PRESENTED:

Can a school district charge teacher's participation time in National Guard annual training against the teacher's annual sick leave?

AUTHORITIES:

Sections 8-9-70, 25-1-2550, and 59-1-400, [Code of Laws of South Carolina \(1976\)](#), as amended;

1977 Op.Atty.Gen., No. 77-285, p. 218 (September 12, 1977);

1976 Op.Atty.Gen., No. 4441, p. 296 (September 3, 1976);

Letter of Attorney General to Municipal Officer (April 14, 1972);

Letter of Attorney General to Executive Director, Columbia Metropolitan Airport (November 22, 1978).

DISCUSSION:

[Section 25-1-2550 of the Code of Laws of South Carolina](#), 1976 provides:

Officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay, seniority or efficiency rating, when attending National Guard encampments or schools for training, under proper authority, and on all other occasions when ordered to active duty, in the service of the State of South Carolina. (Emphasis Added).

A similar provision is contained in [Section 8-7-90 of the Code of Laws of South Carolina](#), 1976, which applies to all military training without restriction to encampments, training schools, and active duty in state service as provided in [Section 25-1-2550](#). This Office has previously issued opinions relevant to the issues raised herein. In 1977 Op.Atty.Gen. 77-285, p. 218, (September 12, 1977), it was the opinion of this office that a 'public employee or officer was entitled to

his full, regular public salary plus any additional compensation he or she might receive from their respective military units.' See also, Letter of Attorney General to Municipal Officer, dated April 14, 1972. In so finding, we stated: The legislative purpose in enacting these statutes obviously was to mitigate the hardships attendant upon those who drop their own affairs to take up the burdens of their state or country. Such loyal service was to be rewarded, and this intent is reflected in the provision that public employees serve 'without loss of pay.' Op. 77-285.

Further, in an unpublished opinion letter, dated November 22, 1978, to the Executive Director of the Columbia Metropolitan Airport, we stated:

It is this Office's opinion that the Legislative purpose in enacting these statutes was not [only] to mitigate the financial hardships that may be attendant upon military service, but also to act as a reward or an incentive for employees to join the National Guard or Military Reserve.

*2 Initially, it should be noted that [Section 25-1-2550](#) provides that state employees shall be entitled to 'military leave.' Therefore, by the clear and unambiguous terms of the statute, this leave could not be construed as sick leave. In addition it is equally clear that to charge a public employee's military leave against his sick leave would deprive him of full, normal compensation, since he would be deprived of this leave for use in actual sicknesses. This would obviously be contrary to the legislative intent in enacting [Sections 25-1-2550](#) and [8-7-90](#).

Furthermore, it would be completely violative of the statutory language and legislative intent to attempt to construe the Public Employees Sick Leave Act, [Section 59-1-400 of the Code of Laws of South Carolina](#), 1976, to include military leave within the definition of 'sick leave.' In 1976 Atty.Gen.Ops. 4441 (September 3, 1976), we noted that:

The phrase 'sick leave' has a common or popular meaning referring specifically to the actual sickness of an employee; through further definition by employers the term has also taken on a technical meaning with additional application for such benefits as sickness of immediate family, doctor's/dentist's appointment, alcoholism, etc. [Citations Omitted].

While it is true that our opinion did provide that school districts may revise its sick leave policy to provide a more liberal construction, it is obvious that such revisions must be consistent with the legislative intent and purpose of the enabling statute. There is no expression of legislative intent to permit school districts to expand the meaning of 'sick leave' to include absences completely unconnected with any sickness. Moreover, rather than providing a more liberal sick leave benefit, the requirement that military leave be charged against sick leave would in effect restrict rather than liberalize such benefits.

CONCLUSION:

It is the opinion of this Office that [Section 59-1-400 of the 1976 Code](#) cannot be construed so as to charge military duty to sick leave for public employees engaged in National Guard or Military Reserve activities. To do so would deprive these employees of their full, normal compensation in violation of [Sections 8-9-70](#) and [25-1-2550 of the 1976 Code](#).

Richard B. Kale, Jr.
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