

1976 S.C. Op. Atty. Gen. 338 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4479, 1976 WL 23096

Office of the Attorney General

State of South Carolina

Opinion No. 4479

October 6, 1976

\*1 South Carolina public employees are limited to a maximum of fifteen (15) calendar days of military leave during each year, but only as necessary to meet the minimum requirements as imposed by Federal law for annual training.

TO: Jack S. Mullins, Ph.D.  
Director  
State Personnel Division

#### QUESTION PRESENTED

Does the fifteen (15) days of paid military leave provided in § 44–861 refer to a total of fifteen (15) calendar days of active duty status or does it refer to a total of fifteen (15) work days that may be missed without loss of pay?

#### CITATION OF AUTHORITY

[English v. Blacher](#), 3 N.E.2d 343 (Mass).

[Van Dresser v. Firlings](#), 24 N.E.2d 969 (Mass).

Act No. 518, Statutes at Large of South Carolina of 1944, page 1450, Section 10.

§ 44–861, Code of Laws of South Carolina, 1975 Supp.

Act No. 644, Statutes at Large of South Carolina, 1954, part 3, Section 7, page 1678.

54 STAT. 1135 (1940) now [32 U.S.C. § 502](#).

#### DISCUSSION OF ISSUES

We have expressed earlier, [see letter to F. E. Ellis from C. Tolbert Goolsby, Jr., April 10, 1973, and letter to Albert D. Ray from C. Tolbert Goolsby, Jr., September 14, 1973], ‘as there is no express requirement set forth in § 44–861, that the fifteen day period involved fifteen consecutive days, it cannot properly be construed that the period means fifteen consecutive days.’ The statute in question reads as follows:

§ 44–861. Leaves of absence for public employees in military forces.—All officers and employees of this State or any political subdivision thereof, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, the Reserve Corps of the Marines, the Coast Guard Reserve and the United States Air Force Reserve shall be entitled to leave of absence from their respective duties without loss of pay, time, or efficiency rating, for a period not exceeding fifteen days in any one year during which they may be engaged in training or other such duties ordered by the Governor, the War Department, the Treasury Department, the Navy Department or the Air Force Department. In the event any such person is called upon to serve during an emergency he shall be entitled to such leave of absence for not exceeding thirty additional days.

The question you present evolves partially from the phrase ‘for a period not exceeding fifteen days in any one year during which they may be engaged in training . . .’ The State of Massachusetts wrestled with a similar problem and concluded that ‘according to the ordinarily accepted meaning of words, ‘a period of thirty days’ which begins on a fixed date (emphasis added) would end at the expiration of thirty days from that date.’ [Van Dresser v. Firlings](#), 24 N.E.2d 969. However, when a statute which reads ‘a period of thirty days’ has no fixed date of beginning, it is to be construed as equivalent to an aggregate of thirty days within the year. [English v. Blacher](#), 3 N.E.2d 343. Since there is no fixed date of beginning in § 44–861, a similar interpretation would require that the fifteen days be construed in the aggregate.

\*2 Further examination of legislative history reveals that the original Act containing the above-mentioned phrase was first inserted into the temporary section of the Appropriations Act of 1944, under the Adjutant General's Office section. It remained there yearly until 1950 when it was inserted into the permanent provisions of the Appropriations Act. The Federal Law in effect at that time, 54 STAT. 1135 (1940) mandated the minimum requirements for National Guard training as follows: ‘to participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least fifteen days each year.’ (emphasis added). It seems clear from reading both the State and Federal statutes, that the South Carolina Legislature intended to provide for public employees to be able to meet their minimum military obligations without loss of pay, time, or efficiency rating. If a public employee's branch of service orders him to military training for fifteen working days within the year, it has been provided in this State by the Legislature that he may take military leave. However, while a fifteen day maximum is allowed, it would not entitle a public employee to take the full fifteen work days leave if it is to include training which is supplemental to this minimal requirements of the Federal law. For example, if a public employee is called to duty for a fifteen calendar day period, which starts on a Saturday and ends on a Saturday, he would only be entitled to ten work days of military leave within that year, no matter how many extra non-emergency days of military duty that he was called to serve. However, if a public employee is ordered to fifteen non-consecutive work days of military duty in order to complete his minimum requirements as required by Federal law, that employee would be entitled to fifteen work days of military leave.

## CONCLUSION

South Carolina public employees are limited to a maximum of fifteen (15) calendar days of military leave during each year, but only as necessary to meet the minimum requirements as imposed by Federal law for annual training.

Stephen T. Savitz  
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 338 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4479, 1976 WL 23096