

1975 S.C. Op. Atty. Gen. 128 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4050, 1975 WL 22347

Office of the Attorney General

State of South Carolina

Opinion No. 4050

July 14, 1975

*1 Mr. Ben Scott Whaley
Barnwell, Whaley, Stevenson & Patterson
Law Offices
120 Meeting Street
Post Office Drawer H
Charleston, S.C. 29402

Dear Mr. Whaley:

You have requested an opinion from this Office as to whether the Police Chief of Charleston must have been a resident of South Carolina for a year preceding his appointment as the Chief of Police.

South Carolina Code of Laws, 1962, Section 53-372 states in part

The county policemen shall have been bona fide residents of Charleston County for at least one year before appointment . . .

The question therefore arises if the chief of police would be considered a policeman under the terms of this statute. The law appears to be split upon this issue. See in general 65 C.J.S. Municipal Corporations §§ 563, 565; Words and Phrases 'Policeman'. Several cases have held that requirements governing policemen do not also cover the Chief of Police. In State v. Ranslow, 154 A.2d 526 (1959) the Court held that a statute stating that no person would be appointed a policeman until he has passed an examination as to his educational, physical and general qualifications would not apply to the appointment of the chief of police. See also State v. Weatherly, 38 N.W.2d 472 (1949) in which the court found that the term police officer as used in state statutes did not apply to the chief of police.

It is a well established rule of statutory construction that the intent of the legislature is to be given effect. McGlohan v. Harlan, 254 S.C. 207, 174 S.E. (2d) 753. In the absence of ambiguity, or absurdity, statutes are to be applied according to the clear meaning of their language. Boyd v. State Farm Mutual Automobile Insurance Co., 260 S.C. 316, 195 S.E. (2d) 706 (1973).

Section 53-372 establishes the qualifications for Charleston County policemen. Section 53-373 states 'each of such policemen . . .' shall take an oath. You have informed me that this statutory oath is not used; however, all the policemen and the chief of police do take the same oath. Section 53-374 states 'each of the policemen' shall enter into a bond, and it is my understanding that this is a blanket bond. The subsequent statutes, therefore, do not clarify if the legislature intended the chief of police to be covered by the express provision of Section 53-372. It is, of course, true that had the legislature intended the chief of police to be covered by this statute it would have been a simple matter to include him specifically. I am, also, unaware of any specific ordinance passed by the County Council or law which would be controlling in this determination.

A secondary consideration exists in that the statute itself may be unconstitutional on the grounds that it is special legislation for the County of Charleston. See in general the Constitution of South Carolina, Article III, Section 34, subsection IX; Elliott v. Sligh, 103, S.E.2d 923, 233 S.C. 161 (1958). It is, of course, presumed that the statutes enacted

by the Legislature are Constitutional until and unless a court of law declares otherwise. However, it is my opinion that should an action be brought for a Declaratory Judgment, the statute in question, Section 53-372, would be held unconstitutional as violating Article III, Section 34, subsection IX of the Constitution of South Carolina.

*2 I would, therefore, concur with your interpretation that a substantial question exists as to whether or not the statute which expressly refers to 'policemen' would also extend to the chief of police; and, that the statute is probably unconstitutional in that it apparently violates Article III, Section 34, subsection IX of the South Carolina Constitution.

It is therefore the opinion of this Office that the Chief of Police is not governed by the requirements of Section 53-372 of the South Carolina Code.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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