

1975 WL 29116 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1975

*1 Mr. Clifford Moyer
Director
Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Moyer:

This is response to my correspondence of late with you, Mayor Jackson, and Chief Masceri.

As we understand the situation in question, Officer Ken Gilstrap of the Liberty Police Department was originally hired in 1970. Officer Gilstrap was therefore eligible under the 'grandfather' clause of Section 53-44, 1962 Code of Laws, as amended, and he was not required to pass the course of training made mandatory by that statutory provision. He was injured in the line of duty in 1973 rendering him unable to work and for which injury he was compensated by thirty-three (33) weeks of workmen's compensation benefits. At the termination of the benefits he was out of work, to a great extent due to the injury, for approximately ten (10) months. He was rehired in October of 1974.

During the period that he worked between 1970 and 1973, Officer Gilstrap attended and passed the Criminal Justice Academy Basic Class and Breathalyzer School. He does not have a high school diploma and has not passed the GED examination.

The South Carolina Law Enforcement Training Council has 'by motion' established a standard that any officer who is 'out of law enforcement' for a year or more, should have to take and pass the minimum basic training course before being reinstated. This motion is contained in the minutes of the Council meetings, but has not been otherwise promulgated by the Council or filed with the Secretary of State.

After discussing the matter with Deputy Attorney General J. C. Coleman, we must come to the conclusion that Officer Gilstrap was not 'out of law enforcement' for a year. His injuries, which were compensated by workmen's compensation benefits, prevented his working in law enforcement but did not necessarily render him out of law enforcement. Even if it is conceded that he was able to go back to work during the ten month period preceding October, 1974, the time he was compensated should be considered a period in which he was paid for that which he was physically unable to do, namely, law enforcement. Necessarily the whole workmen's compensation scheme contemplates benefiting a workman for the time that he is impaired and would be working were it not for his injuries.

In any event, there is grave doubt as the legality of effectuating the standard adopted by motion. Without proper promulgation by publication thereby giving adequate notice the standard should not be considered as binding upon the public or those persons to whom it specifically relates. Cf. [Goldberg v. Kelly](#), 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); [Lambert v. California](#), 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957).

In conclusion, it would be our opinion that Officer Gilstrap would not be subject to the requirement of retraining under the Academy's training program and is eligible to serve at present.

Tours truly,

*2 Cameron B. Littlejohn, Jr.
Legal Assistant

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