

Leave of absence for military leave

Number: AGO 86-22

Date: December 22, 1997

Subject:
Leave of absence for military leave

Mr. Howard B. Lenard
City Attorney
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, Florida 33162

RE: MUNICIPALITIES--National Guard duty for officers and employees

Dear Mr. Lenard:

This is in response to your request for an opinion relating to military leave. Following a telephone conversation with your office, I have restated your question as follows:

Is a municipal police officer absent due to National Guard inactive duty training entitled to paid leave of absence beyond 17 days under either s. 115.07(1) or s. 250.48, F.S.; if not, is he eligible for administrative leave without pay beyond 17 days?

Section 115.07, F.S., as amended by Ch. 85-279, Laws of Florida provides:

"115.07 Officers and employees' leaves of absence for reserve or guard training.—

(1) *All officers or employees of the state, of the several counties of the state, and of the municipalities or political subdivisions of the state who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard are entitled to leaves of absence from their respective duties, without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.*

(2) *Leaves of absence granted as a matter of legal right under the provisions of this section shall not exceed 17 working days in any one annual period. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating." (e.s.)*

Additionally, s. 250.48 provides:

"250.48 Leaves of absence.--*Any officer or employee of the state, of any county of the state, or of any municipality or political subdivision of the state who is a member of the Florida National Guard is entitled to leave of absence from his respective duties, without loss of pay, time, or efficiency rating, on all days during which he is engaged in active state duty, field exercises, or other training ordered under the provisions of this chapter. However, a leave of absence without loss of pay granted under the provisions of this section, may not exceed 17 days at any one time.*" (e.s.)

According to supplemental information furnished to this office, the training in question is ordered inactive duty training pursuant to federal military regulations. See ss. 115.07(1), (4), and (5); 115.08, F.S. Therefore, the provisions for leaves of absence for guard training contained in s. 115.07 apply and control; the provisions of s. 250.48, however, are inapplicable to the type of training duty described above since it is not training ordered under the provisions of Ch. 250.[1]

Both parts of your question are answered by the plain meaning and language of s. 115.07, F.S. See *Graham v. State*, 362 So.2d 924 (Fla. 1978) (generally words in statute should be given their plain and ordinary meaning); *Crown Diversified Industries, Inc. v. Watt*, 415 So.2d 803 (4 D.C.A. Fla., 1982). The express language of s. 115.07(2) limits a paid leave of absence granted as a legal right pursuant to that statute to "17 working days in any one annual period." Subsection (2) of s. 115.07 specifies that administrative leaves for additional or longer periods of time for assignment to duty functions of a military character *shall be without pay, and shall be granted* by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating. See also subsection (5) of s. 115.07, F.S., stating that

"It is the intent of the Legislature that the state, its several counties, and its municipalities and political subdivisions shall grant leaves of absence for active or inactive training to all employees who are members of the United States Reserve Forces or the National Guard, to ensure the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel."

Thus, subsection (2) of s. 115.07 expressly provides that a member of the National Guard shall be granted administrative leave without pay by his municipal employer for assignment to duty functions of a military character. Therefore, it is my opinion that pursuant to s. 115.07(2) this police officer, absent due to inactive duty training, is eligible for, and must be granted, upon request, administrative leave without pay for absences beyond 17 days.

In summary, it is my opinion that

(1) The grant of paid leave of absence for National Guard training ordered pursuant to federal military regulations, which is contained in s. 115.07(1), F.S., is limited to 17 working days in any one annual period.

(2) Pursuant to s. 115.07(2), F.S., administrative leave without pay must be granted, upon request, for additional or longer periods of assignment to duty functions of a military character.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Anne Curtis Terry
Assistant Attorney General

[1] Section 250.48, F.S., pertains to state-ordered duty. See ss. 250.06, 250.27, 250.28, 250.49, F.S. See *also* AGO 74-27.