S T A T E O F T E N N E S S E E
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November 27, 2001

Opinion No. 01-169

Paid Military Leave for Public Employees When Called to Active Duty By Governor

QUESTION

Do the provisions of Tenn. Code Ann. § 8-33-109, requiring state and local governments to grant paid leave to employees while they perform military service, apply to members of the Army and Air National Guard when they are called into service by the Governor under the authority of Tenn. Code Ann. § 58-1-108?

OPINION

Yes, the provisions of Tenn. Code Ann. § 8-33-109 regarding leaves of absence for public employees who are members of the Tennessee Army and Air National Guard apply to individuals called to active state duty by the Governor under authority of Tenn. Code Ann. § 58-1-108.

ANALYSIS

As provided in Tenn. Code Ann. § 8-33-109, all public employees in Tennessee are entitled to leave of absence, without loss of pay, accrued leave time or other rights or benefits, "for all periods of military service during which they are engaged in the performance of duty or training in the service of this state, or of the United States, under competent orders. . .." This statute applies to public employees who are, or may become, members of any reserve component of the Armed Forces of the United States, including "members of the Tennessee Army and Air National Guard." Tenn. Code Ann. § 8-33-109. This office has previously opined that Tenn. Code Ann. § 8-33-109 does not violate either the United States or Tennessee Constitutions. *See* Op. Tenn. Atty. Gen. 88-137 (August 8, 1988).

The Governor has the authority under Tenn. Code Ann. § 58-1-108 to call individual members of the National Guard to active state duty, with their consent, to perform any official duty in connection with National Guard activities. It is our opinion that such individuals would be considered to be performing "military service" within the meaning of Tenn. Code Ann. § 8-33-109.

The term "military service" as used in Tenn. Code Ann. § 8-33-109 is not defined.[1] Thus, in construing this statute, legislative intent is determined by examining the natural and ordinary meaning of the language used. *Penley v. Honda Motor Company, Ltd.*, 31 S.W.3d 181 (Tenn. 2000).

The legislative intent appears clear that public employees called to active state duty by the Governor, under the authority of Tenn. Code Ann. § 58-1-108, to perform official duties in connection with National Guard activities are performing military service and engaged in the performance of duty in the service of the state as provided in Tenn. Code Ann. § 8-33-109. Accordingly, such public employees would be entitled to leaves of absence without loss of pay, accrued leave time or other rights or benefits as provided in Tenn. Code Ann. § 8-33-109.

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[1]Although the term "military duty" is defined in Tenn. Code Ann. § 8-33-101, this definition applies only when used in §§ 8-33-101 - 8-33-108.