Leave of absence for military training

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Subject:
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PUBLIC OFFICERS AND EMPLOYEES--LEAVE OF ABSENCE FOR MILITARY TRAINING

To: Henry W. McMillan, Adjutant General, Department of Military Affairs, St. Augustine

Prepared by: Michael Parrish, Assistant Attorney General

QUESTION:

May more than one leave of absence without loss of pay, time, or efficiency rating be granted under s. 115.07, F. S., during the course of a calendar year so long as the total period of all such leaves does not exceed seventeen calendar days during that calendar year?

SUMMARY:

Under s. 115.07, F. S., more than one leave of absence without loss of pay, time, or efficiency rating may be granted during the course of a calendar year so long as the total period of all such leaves does not exceed seventeen calendar days during that calendar year.

Section 115.07, F. S., provides, in pertinent part:

"All officers or employees of this state, or of the several counties or municipalities of this state, who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the national guard, shall be entitled to leave of absence from their respective duties, without loss of pay, time or efficiency rating, *on all days* during which they shall be engaged in field or coast defense exercise or other training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active duty; provided that *leaves of absence* granted as a matter of legal right under the provisions of this section shall not exceed seventeen days in any one annual period. . . ." (Emphasis supplied.)

As noted in AGO 051-273, Biennial Report of the Attorney General, 1951-1952, p. 212 "[t]he seventeen days' leave of absence granted by s. 115.07 . . . are calendar days and not work-days" and the phrase "one annual period" refers to "one calendar year." (The statute has not been changed since that opinion was rendered.) It is clear from a reading of the above-quoted portion of s. 115.07 that the personnel covered by the statute are entitled to leave of absence without loss of pay, time, or efficiency rating "on all days" during which they are engaged in the specified training activities, subject only to the proviso that such leaves of absence shall not exceed seventeen days in any one annual period. There is nothing in the statute which directly

or indirectly limits the grant of leave to a single continuous period. To the contrary, the use of the terms "all days" and "*leaves* of absence" suggests a legislative intent to authorize the grant of such leave in the broadest possible terms, limited only by the total number of days such leave may be granted during a single year. Thus, in view of the absence of any language in the statute or any expression of legislative intent to the contrary, I am of the opinion that the leave of absence without loss of pay, time, or efficiency rating authorized by s. 115.07, F. S., may be granted for up to seventeen days during one calendar year, irrespective of whether the leave is taken during one continuous period or during several periods of training.

In reaching this conclusion I have not overlooked AGO 060-103, which answers in the negative a question posed as follows:

"*May the Florida industrial commission allow military leave for the actual time absent from work up to the maximum total period allowed by s. 115.07, F. S.*, and without regard to whether such military leave is taken intermittently or during a continuous period provided that the total of such leave may not exceed the 17-day limit imposed by statute?" (Emphasis supplied.)

It appears that the negative answer to that question was occasioned by the portion of the question italicized above, which restricts the scope of the question to work days instead of calendar days. A reading of AGO 060-103 in its entirety reveals that there was no issue presented as to whether leave under s. 115.07, F. S., was limited to a single continuous period or could be taken intermittently and no conclusion was drawn as to such issue. I agree, for the reasons stated in AGO 060-103 and AGO 051-273, *supra*, that the italicized portion of the foregoing question was properly answered in the negative; but to the extent that the answer to said question may suggest that the leave of absence authorized by s. 115.07, F. S., may not be taken intermittently, it should be regarded as superseded by this opinion.