



DPS Legal Review

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UNIFORM DIVISION RETIREMENT

After working for more than twenty-two years in law enforcement in DeKalb County, Robert Wayne Melton ("Melton") was hired by the Georgia Peace Officer Standards and Training Council ("POST"). From the time that he was hired by POST, the Employees' Retirement System's ("ERS") records indicated that he was under the "sworn retirement plan" (which allows employees to retire at age fifty-five (55) with ten years of service).

Melton never held a position in the Uniform Division, never trained as a State Trooper, and never contended that he ever served in the Uniform Division of the Department of Public Safety ("DPS"). Melton made no greater contribution to the retirement system than employees who are not eligible for the sworn retirement plan. After working ten years, he notified POST that he intended to retire. Prior to Melton's retirement, ERS provided DPS with a list of employees that ERS believed were not enrolled in the appropriate retirement plan. The Commissioner of DPS learned that DPS had improperly reported approximately 54 employees of POST, DPS, and other attached agencies as being eligible for early retirement.

The Commissioner met with the Executive Director of ERS about the problem. After that meeting, the Commissioner decided that there was no legal reason for employees, other than those in the Uniform Division, to be eligible for sworn retirement at the age of fifty-five (55). The Commissioner is statutorily charged with making policy decisions and ensuring that the policies and procedures are carried out within DPS. Based upon his statutory obligations, the Commissioner directed DPS Human Resources staff to cease the improper reporting, to correct the records, and to report the correct status of the employees to ERS.

Consequently, Melton was sent a memorandum advising him that he had been erroneously enrolled in the sworn plan that is specifically reserved by law for members of the Uniform Division of the Georgia State Patrol ("GSP"). He was told that he would be placed in the non-sworn retirement plan and that this required change was beyond the discretion of GSP. The memorandum attached the letter from the Executive Director of ERS advising the DPS Commissioner that DPS must make the ultimate determination of which of its employees were in the Uniform Division and reiterating that only employees in the Uniform Division would be entitled to early retirement provisions.

By letter, Melton told the Executive Director of ERS of his objection to the change in his retirement plan. Melton, then, submitted his retirement application. It was denied because he was less than sixty (60) years of age. Melton resigned from POST and filed suit seeking a determination regarding his entitlement to receive early retirement benefits.

HOLDING: The Court held that the DPS Commissioner had no authority or discretion to include in the early retirement plan anyone who had not served in the Uniform Division. Melton was not a DPS employee, and he never completed training and certification as a Trooper. Membership in the Uniform Division is determined by the criteria set out in O.C.G.A. §35-2-30. Any attempt by the Commissioner to designate someone as a member of the Uniform Division who did not meet the statutory criteria would be *ultra vires*¹ and illegal. Hence, Melton had no vested right to benefits to which he was never entitled to receive. ERS v. Melton, __ S.E.2d __, 2008 WL 4916076 (Ga. App.).

¹ An act is *ultra vires* if it is performed without any authority to act.

CMV INSPECTION/MOTION TO SUPPRESS

An Alabama officer with the Interstate Criminal Enforcement Unit observed a tractor-trailer following another vehicle too closely. The officer exited the median and pulled alongside the truck without turning on his overhead lights. The truck attempted to move into the officer's lane without using a turn signal. The officer pulled the truck over based upon the improper lane change.

Before asking for the driver's license, the officer told him that he was conducting a level two inspection of the truck and would not be issuing a traffic citation. A level two inspection allows an officer to review a truck's paperwork and equipment. The officer conducted this inspection pursuant to an Alabama statute.

The driver asked why he had been stopped. The officer told him that he had been following another vehicle too closely. The driver and his passenger appeared nervous. The paperwork for the truck contained several omissions and irregularities. The officer also observed five cellular telephones in the truck. Additionally, the seal numbers listed on three shipping papers provided by the driver did not match the number on the actual seal on the trailer. The shipping papers also lacked phone numbers or addresses.

Further, the truck was off its alleged route by more than 150 miles. The driver's logbook and receipts were inconsistent. While the officer was in the midst of his inspection, he requested a canine unit. The canine unit gave a positive alert to the trailer. The officer finished his inspection and told the driver he planned to conduct a probable cause search of the trailer. The search revealed approximately 1,600 pounds of marijuana. The driver was arrested. He moved to suppress the evidence at trial.

HOLDING: The Court held that an administrative inspection of a closely regulated business is a well-established exception to the warrant requirement for a search. The Supreme Court has established a three-prong test for determining whether a warrantless administrative inspection meets the requirements of the Fourth Amendment. First, "there must be substantial government interest that informs the regulatory scheme pursuant to which the inspection is made." Second, the

warrantless inspections must be necessary to further the regulatory scheme. Third, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant.

In this case, the Court held that the officer's good-faith reliance on the statute's validity was objectively reasonable. The language in the Alabama statute provides that designated officials may inspect commercial motor vehicle records in order to ensure compliance with state and federal law. Further, the Federal Motor Carrier Safety ("FMCS") Regulations, adopted in Alabama, require that drivers are instructed about and comply with all federal regulations. Because the officer was authorized to detain the driver for purposes of conducting an administrative inspection, his request for the canine unit was lawful. The canine's positive alert to the trailer gave the officer probable cause to search the trailer pursuant to the automobile exception to the warrant requirement. U.S. v. Steed, __ F.3d __, 2008 WL 4831413 (C.A. 11(Ala.)).

ALS REMINDER

⚙ The ALS Motion for Continuance Form has been updated in Public Folders. If needed, a Motion for Continuance should be filed as soon as possible.

⚙ Please take **all** of the required documents to the ALS Hearing.

1) In **roadblock cases** - take a **certified** copy of the Roadblock Supervisor Approval Form.

2) In **DUI cases** involving the Intoxilyzer 5000 - take a copy of your Intoxilyzer permit and the **original** Intoxilyzer test printout. (It is important to make a copy of your Intoxilyzer permit prior to arriving in Court.)

QUOTABLE WISDOM WORKS

"Gratitude is a quality similar to electricity: it must be produced and discharged and used up in order to exist at all."

~ William Faulkner

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