



HENRY McMASTER
ATTORNEY GENERAL

July 15, 2010

James M. Holly, Chief of Staff
Comptroller General's Office
1200 Senate Street
305 Wade Hampton Office Building
Columbia, South Carolina 29201

Dear Mr. Holly:

You have questioned whether circuit public defenders are exempt from this State's unemployment program and, as a result, the employer does not have to pay an unemployment contribution on their behalf. You particularly stated that such a determination may be based upon whether the public defenders may be considered members of this State's judiciary.

Circuit public defenders are established pursuant to S.C. Code Ann. §§ 17-3-520 et seq. Based upon my review of such provisions, I am unaware of any basis to specifically exempt circuit public defenders from this State's unemployment program.

Title 41, Chapters 27 through 41, of the State Code of Laws provides for the system of unemployment compensation in this State. Section 41-27-260, as amended by recently enacted Act No. 146 of 2010, specifically eliminates certain positions from being considered as "employment" for purposes of Title 41. Specifically excluded from the term "employment" for such purposes is

(5) service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41-27-230(2)(b), if the service is performed by an individual in the exercise of his duties as:

(b) a member of a legislative body, or a member of the judiciary of a state or political subdivision;....

While a circuit public defender is by S.C. Code Ann. § 9-8-40 made a member of this State's retirement system for judges and solicitors, I am unaware of any basis for considering a circuit public defender a member of this State's judiciary. Therefore, in the opinion of this office, we are unaware

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of any basis to conclude that a circuit public defender would be exempt from this State's unemployment program.

If there are any questions, please advise.

Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in cursive script, appearing to read "Charles H. Richardson".

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "Robert D. Cook".

Robert D. Cook
Deputy Attorney General