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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 22, 1999

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais St.
Columbia, SC 29201

Dear Mr. Schroeder:

You have requested the advice of this Office as to questions regarding the Patient's Compensation Fund which your agency is currently reviewing. *See §38-79-410, et seq (1989)*. As you reference in your letter, I previously addressed related questions in an informal opinion dated July 20, 1999. Your additional question is whether the State could be held liable if the Fund became insolvent due to mismanagement or negligence.

I believe that the response that I gave to your first question in the July 20 opinion applies to this question also. The State should not be liable under the terms of statutory provisions for the Fund and the defenses of sovereign immunity and under the Tort Claims Act. *See §§ 15-78-20 and 15-78-60 (Supp. 1998); §§ 38-79-420 (Supp. 1998)*. Of course, anyone can file a suit if he or she is so motivated, and only a court can ultimately determine liability under the circumstances that you mentioned. I also cannot determine, within the scope of an opinion, whether specific factual circumstances within those that you have suggested might create a liability. You may wish to contact the staff members of the Budget and Control Board who deal with tort claims issues and may be of some guidance. Opinions of this Office cannot function as formats to address risk management issues. Finally, as noted in the previous informal opinion, having specific statutory provisions spelling out that the State is immune from suit for recovery of any money in excess of the Fund and is immune from particular claims would further ensure that the State's immunity is recognized.

I hope that this information is of assistance. This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the

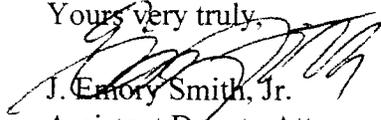
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undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General