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The State of South Carolina

Opinion No. 88-55
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July 21, 1988

The Honorable Earle E. Morris, Jr.
Comptroller General
State of South Carolina
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

On behalf of the Foundation Board of Directors and the Alumni Association's Alumni National Council of Clemson University, you have asked whether Section 33-31-180 of the Code of Laws of South Carolina (1987 Cum. Supp.) means that the members of these boards would be immune from personal liability for claims under state law in carrying out their responsibilities.

Section 33-31-180 was codified in 1987 following the adoption of Act No. 192, 1987 Acts and Joint Resolutions. In adopting the act, the General Assembly found that

> the services of not-for-profit boards are critical to the efficient conduct and management of the public and charitable affairs of the citizens of this State. Members of these not-for-profit boards must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers.

In this regard, Section 33-31-180 was added to the Code, providing the following:

> (A) All directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (B) are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful,

> wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.
>
> (B) Subsection (a) applies to the following:
>
> (1) electric cooperatives organized under Chapter 49 of Title 33;
>
> (2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12). 1/

1/ 26 U.S.C. § 501, of the Internal Revenue Code, provides exemption from taxation for certain corporations, trusts, and the like. In particular subsection (c) provides a list of exempt organizations; those relevant herein are:

> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does

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In interpreting a statute, it is the primary obligation of both a court and this Office to determine legislative intent and give it effect if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words of a statute are generally given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the language is plain and unambiguous, it must be applied literally. Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976).

Applying these rules of statutory construction in interpreting Section 33-31-180, it is clear that the General Assembly has provided immunity to all directors, trustees, or members of governing bodies of not-for-profit cooperatives, corporations, associations, and organizations as defined in the statute, from lawsuits arising from the conduct of the affairs of these entities. The immunity of these individuals will be removed if

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> not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
>
> ....
>
> (6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.
>
> ....
>
> (12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses. ...

the conduct giving rise to the lawsuit amounts to wilful, wanton, or gross negligence. It must be noted that the immunity so granted is individual and does not apply to the not-for-profit cooperatives, corporations, associations, or organizations themselves. 2/

To determine whether Section 33-31-180 of the Code would apply to the Foundation Board of Directors and the Alumni Association's Alumni National Council of Clemson University, it would be necessary to know whether these organizations are considered "not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12)." If these organizations fall within the specified definition, their directors or trustees would appear to be entitled to the immunity for claims under state law provided by Section 33-31-180 of the Code.

With kindest regards, I am

Sincerely,

T. Travis Medlock
Attorney General

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2/ It may be noted that Section 33-55-210 of the Code provides limits on recovery against charitable organizations for tortious acts of an employee of such an organization. See Section 33-55-220(b) for the definition of "employee." As to officers of organizations covered by Section 33-31-180(b), the provisions of Section 33-31-180 would most probably prevail.