

The State of South Carolina

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July 12, 1988

C. H. McGlothlin, Jr., Esquire
General Counsel
South Carolina Public Service Authority
One Riverwood Drive
Moncks Corner, South Carolina 29461-0398

Dear Mr. McGlothlin:

You have requested an opinion from this Office as to whether the South Carolina Public Service Authority (hereinafter "the Authority") may withdraw from the State Workers' Compensation Fund (hereinafter "State Fund") so that it may establish its own self-insured workers' compensation program. Specifically, your inquiry concerns whether the Authority's participation in the State Fund is mandatory or whether it is optional under the provisions of Sections 42-7-50 and 42-7-60, Code of Laws of South Carolina (1976). It is the opinion of this Office that the Authority does fall within the provisions of Sections 42-7-50 and 42-7-60 and, therefore, it has the option to participate under the State Fund or to secure coverage through other means such as self-insurance.

The State Workers' Compensation Fund was established to provide workers' compensation insurance coverage for officers and employees of the State. Sections 42-7-50 and 42-7-60 of the Code provide, inter alia, that any county, municipality or other political subdivision or any agency or institution of the State may elect to participate under this insurance program. Therefore, it is clear that participation in the State Fund is not mandatory for all governmental entities.

It has long been recognized that the Authority is not a traditional State entity. In Rice Hope Plantation v. South Carolina Public Service Authority, 216 S.C. 500, 59 S.E.2d 132 (1950), the South Carolina Supreme Court described the Authority

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as an independent, quasi-municipal corporation which was established to be self-sustaining in terms of financial operations and internal management. The Authority was created in 1934 by an Act of the General Assembly and is governed by an 11-member board. Section 58-31-10, et seq. of the Code. The Authority's enabling legislation provides that it was created as "a body corporate and politic" with the

. . . power to develop the Cooper River, the Santee River, and the Congaree River in this State, as instrumentalities of intrastate, interstate and foreign commerce and navigation; to produce, distribute and sell electric power; to reclaim and drain swampy and flooded lands; and to reforest the water sheds of rivers of this State

While the Authority is embodied with certain government powers, it is not under the day-to-day financial operations control of the State and does not receive, and has never received, appropriated funds from the State. See Op. Atty. Gen. No. 78-210. The Authority is required by law to generate its own operating revenues and is specifically prohibited from using the taxing authority of the State for financing its operations or to pay any obligations incurred. Sections 58-31-30 (13) and (14) and 58-31-130 of the Code. See Op. Atty. Gen. No. 78-210. To accomplish this, the General Assembly has granted the Authority specific power to manage its own business operations and affairs. Sections 58-31-30 and 58-31-70 of the Code. Since the Authority has the power to set its own rates (Sections 58-31-30(13) and 58-31-360) and pays no dividends to stockholders, the costs of its operations have a direct effect on the cost of electricity to its customers.

Moreover, the Authority's employees are treated differently than the employees of a typical State agency. For example, the Authority's employees are not within the State employee classification system; their paychecks are issued by the Authority, not the State; and they do not receive sick leave or annual leave under the same guidelines as State employees.

On several previous occasions, this Office has recognized the unique nature of the Authority. We have previously concluded that the Authority did not fall within the definition of "State agency" so as to require that its motor vehicles be under the control and management of the Division of Motor Vehicle Management, Budget and Control Board. Op. Atty. Gen. 78-210. Likewise, we have opined that the Authority was not subject to

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the reorganizational authority of the State Reorganization Commission. Op. Atty. Gen. dated October 31, 1984.

In summary, because of the Authority's specific power to manage and control its own affairs and its independence from day-to-day financial operations control of the State, it is clear that the Authority falls within the provisions of Sections 42-7-50 and 42-7-60 of the Code and that participation in the workers' compensation insurance coverage provided by the State Fund is optional rather than mandatory.

With kindest regards, I am

Very truly yours,



Robert D. Cook
Executive Assistant for Opinions

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