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The State of South Carolina



Opinion No 87-90

B240

Office of the Attorney General

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November 10, 1987

Mr. Richard W. Kelly
Division Director
Division of General Services
Budget and Control Board
1201 Main Street
4th Floor, Suite 420
Columbia, South Carolina 29201

Dear Mr. Kelly:

You have asked the opinion of this Office whether one governmental entity can file a claim or action against another governmental entity under the South Carolina Tort Claims Act [§ 15-78-10, et seq. of the amended Code].¹ We believe that the Tort Claims Act should not be construed to permit a claim by a governmental entity. I caution, however, that any conclusion in this area is not free from doubt since there is no South Carolina decisional law directly on point.

In construing legislation, the primary concern is to ascertain and determine the legislative intent if it can reasonably be discovered in the language of the statute. McMillan Feed Mills, Inc. v. Mayer, 265 S.C. 500, 220 S.E.2d 221 (1975). While this standard is easily stated, often times the legislative intent is uncertain and the various rules of statutory construction must be relied upon to assist in the search. The starting point in every case is the language of the statute itself. U.S. v. Jackson, 759 F.2d 342 (4th Cir. 1985) cert. den. 106 S.Ct. 259 (1985).

The Act's overall purpose and intent is clearly identified. The Tort Claims Act codified (and restored) the principle of sovereign immunity [§ 15-78-20(b)] and thereafter modified the doctrine and provided a comprehensive claims statute for resolution of claims against the government. § 15-78-70. Pursuant to the Act, "[a]ny person who may suffer a loss proximately caused

¹ Governmental entity is defined as the "State and its political subdivisions thereof." § 15-78-30(d).

by a tort of...a governmental entity,...may file a claim...." § 15-78-50(a). Sections 15-78-70(c) and 15-78-120(a) additionally reference the term "person" in the context of an action against the government brought under the Act. The term "person" is not defined within the Act, and, thus, unless a legislative indication of special meaning is found elsewhere the term should receive its ordinary and popular significance in this context. Cf. Hay v. South Carolina Tax Commission, 273 S.C. 79, 254 S.E.2d 301 (1979).

There is nothing contained in the language of the Act that dictates a special meaning be applied to the term "person." Section 15-78-20(a) identifies that the Act is intended to provide "an orderly transition to the recognition of individuals' rights against the tortious sovereign...." [Emphasis added]. The statutory definitions of "claim" and "loss" are nonsignificant in a search to ascertain the scope of the term "person." See, §§ 15-78-30(b) and (f). The General Assembly does provide some general principles that should be followed in any interpretation of the Act. The most significant is:

The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

§ 15-78-20(f). This statutory provision codifies the long-standing rule that statutes permitting suit against the government must be strictly construed in favor of the government's immunity from tort liability. Stanley v. South Carolina State Highway Department, 249 S.C. 230, 153 S.E.2d 687 (1967); Reed v. Medlin, 284 S.C. 585, 328 S.E.2d 115 (S.C.App. 1985). The Act also provides that a governmental entity is liable for its torts in the same manner as a private individual "subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the Act]." § 15-78-40. This provision recognizes the rule established in decisional law that subject to the provisions of the particular claims statute, general tort principles are applicable in an action against the government. Still v. Hampton and Branchville Railroad, 353 S.C. 72, 169 S.E.2d 97 (1969).

Thus, in brief summary, an analysis of the Act itself reflects that "persons" may file claims and nothing in the language of the Act compels that the term be defined in other than its ordinary significance. Moreover, in doubtful cases the Act should be strictly construed in favor of immunity, and subject to the provisions of the Act, general tort principles are

applicable to claims against the government.²

Much like the language of the Act itself, other South Carolina law does not conclusively resolve the question presented although there are some related decisions and statutes that provide guidance. Ordinarily, in construing South Carolina statutory law, the term "person" is broad enough to include associations, corporations, and artificial persons unless the intent to exclude such persons is plainly obvious. § 2-7-30; U.S. Tire Company v. Keystone Tire Sales Company, 153 S.C. 56, 150 S.E. 347 (1929). On the other hand, when the term "person" in a statute is interpreted consistent with the principle of strict construction the term ordinarily should be construed to include only natural persons. Bob Jones University v. South Carolina Tax Commission, 274 S.C. 93, 261 S.E.2d 309 (1979). Also, at least in the context of federal Constitutional provisions, our Court has concluded that political subdivisions are not "persons." Hibernian Society v. Thomas, 282 S.C. 465, 339 S.E. 339 (S.C.App. 1984). Similar but unrelated statutory provisions identify that on occasion the General Assembly has chosen to provide a statutory definition of the term "person" in the context of filing a claim. See, § 39-5-50 and §§ 15-77-210 and 220 (now repealed). However on at least as many occasions the General Assembly has decided not to provide a statutory definition of "person" in a claims context. See, e.g., § 57-5-1810 and § 57-17-1810 (both now repealed). Thus, it is clear that where the General Assembly intends to define "person" in other than its ordinary significance it has done so. To summarize, South Carolina law, independent of the Tort Claims Act, reflects that the term "person" ordinarily may be construed to include business corporations and associations except when the term is strictly construed, and in those circumstances, "person" would likely be defined to mean only natural persons. However, with the exception of the one identified case, South Carolina law does not identify whether governmental entities are "persons" as that term is ordinarily understood.

The general law elsewhere is seemingly well established that,

it is a widely accepted rule of statutory construction that general words in a statute such as "persons" would not ordinarily be construed to include the State or political subdivisions thereof.

Perez v. Boston Housing Authority, 331 N.E.2d 801 (Mass. 1975);

² The legislative history of the Act does not assist in defining the term "person" or "claimant" in the context of filing an action or claim against the government. These terms as used in the Act were not defined within any of the versions of the bill nor discussed in any of the public debates or reports.

In re: McLaughlin's Estate, 174 N.E.2d 644 (Oh. 1960); Rapp v. New Mexico State Highway Department, 531 P.2d 225 (N.Mex. 1975); Kilbane v. Secretary of Human Services, 438 N.E.2d 89 (Mass.App. 1982). When general language of a statute is susceptible to being construed as applicable to both government and private parties, the general rule is that government is exempt from the operation of the statute. Sutherland Statutory Construction, § 62.01 (4th Ed.); 82 C.J.S. Statutes § 317.

This general rule of exclusion is not without exception and should not routinely be applied where no impairment of sovereign immunity will occur. Sutherland, supra, at § 62.02; U.S. v. Coumantaros, 165 F.Supp. 695 (D.Md. 1958). With regard to the present inquiry, it could be argued that the inclusion of governmental entity in the term "person" in the context of filing a claim or action under the Tort Claims Act simply provides a benefit to the governmental entity. However, such an argument is superficial, since a broader definition of person in that context would clearly impair the sovereign's right to be free of liability and increase the government's tort liability exposure. Thus, the general rule that the term "person" does not ordinarily apply to the government is appropriate here.

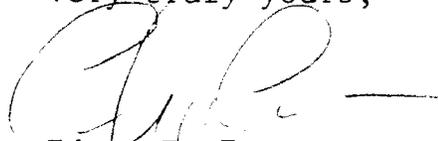
An overview of the Tort Claims Act does not compel us to conclude that the General Assembly must have intended to permit the government to sue the government. While statutory interpretation does not generally involve a review of a statute's wisdom, an interpretation should be avoided that creates an absurd or unrealistic result. However, a legislative classification that does not permit the government to sue itself can certainly be supported by a reasonable hypothesis. Arguably, if the General Assembly desired that public funds be moved among its various agencies and subdivisions by the pursuit of intramural tort claims the General Assembly would most clearly have expressed this intent since distribution of public monies would otherwise be a uniquely political function. Accordingly, defining the term "person" in its ordinary significance as used in the context of filing a claim is not inconsistent with the overall intent and goal of the Tort Claims Act.

Thus, in conclusion, we believe that a governmental entity is not a "person" as that term is used in the context of filing a claim under the Tort Claims Act. We summarize by reiterating our conclusions herein. First, the term "person" should be defined in its ordinary significance since there is no special statutory definition, and, in addition, the term must be strictly construed since an expanded definition would impair the sovereign's immunity from suit and tort liability. The term "person," we believe, does not ordinarily include the government in this context. We also believe that an interpretation of "person" in its ordinary significance is consistent with the overall intent and purpose of the Tort Claims Act. Our conclusion reached

Mr. Richard W. Kelly
November 10, 1987
Page 5

herein is not completely free from doubt since there is no South Carolina decisional law directly on point.³

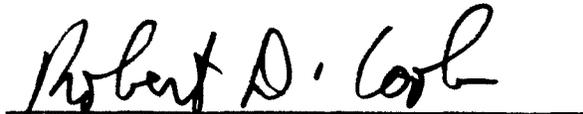
Very truly yours,



Edwin E. Evans
Deputy Attorney General

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REVIEWED AND APPROVED BY:


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³ We appreciate the legal memorandum prepared by the General Counsel for the Budget and Control Board, Division of General Services.