

1984 S.C. Op. Atty. Gen. 164 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-65, 1984 WL 159872

Office of the Attorney General

State of South Carolina

Opinion No. 84-65

June 1, 1984

\*1 James L. Solomon, Jr.  
Commissioner  
South Carolina Department of Social Services  
P. O. Box 1520  
Columbia, South Carolina 29202-9988

Dear Commissioner Solomon:

You have asked for an opinion as to whether or not the South Carolina Board of Social Services (hereinafter 'Board') and/or the South Carolina Department of Social Services (hereinafter 'DSS') can purchase an indemnity bond to protect certain Board members and DSS employees in the event of an adverse judgment in a suit pending against them. It is our advice that there is no authority for either the Board or DSS to purchase an indemnity bond.

Unquestionably, both the Board and DSS are creatures of statute. See, S.C. Code §§ 43-1-10, 43-1-20 (1976). As a creature of statute, the Board and DSS must look to the statute creating them and defining their duties and powers to see what they are authorized respectively to do. They may only exercise such authority and powers as are given to them by statute. Fant v. State Highway Department, 164 S.C. 192, 162 S.E. 262 (1931); Martin v. Saye, 147 S.C. 433, 145 S.E. 186 (1928). This principle is succinctly set out in Southern Railway Company v. South Carolina State Highway Department, S.C., 115 S.E. 2d 685 (1960) wherein the Court stated 'a statutory creature' derives 'its powers from the Legislature. It has no inherent power. Whatever power it attempts to exercise must be found in some Act.' Southern Railway Company, supra, at 688.

The statutes creating the Board and DSS do not authorize the purchase of any type of bond for the protection of the Board's members or the employees of DSS; nor is any such authorization given to the Board or DSS in the Appropriations Act for the fiscal year 1983-1984. Further, there is no appropriation to DSS for the purchase of indemnity bonds. Clearly, there is no express authority either in the statutes creating the Board and DSS or in the Appropriations Act for 1983-1984 relative to DSS authorizing expressly the Board or DSS to purchase indemnity bonds.<sup>1</sup>

There is also no authority for the Board or DSS to purchase indemnity bonds which can be implied from the statutes dealing with bonds for public officials in general or with officials and employees of DSS in particular.

South Carolina Code § 8-3-60 (1976) provides that it shall be unlawful for any person to undertake or attempt to undertake the duties of any office for which a bond is required without giving the bond required. South Carolina Code § 8-3-30 (1976) sets forth the form of bond which shall be given by public officers; this bond binds the officer to 'well and truly perform the duties of said office.' The Board may require the Commissioner and the officers and employees, respectively, of the Department to furnish bonds in amounts the Board may determine. S.C. Code §§ 43-1-50, 43-1-70 (1976).

Some statutes authorizing or requiring governmental officers and employees to give bonds for the faithful performance of their duties permit the governmental entity to procure the bonds for the individual, thus relieving the individual from personal liability and serving to indemnify him for liability arising from the performance of his duties. See, Annot., 71 A.L.R. 3d 13. However, S.C. Code §§ 43-1-50 and 43-1-70 contain no express authorization for the Board to purchase bonds. To the contrary, both provisions clearly require the individual to furnish the bond himself; thus, it appears that the purpose of these sections is to

protect the governmental entity rather than the individual. Annot., 71 A.L.R. 3d at 13, 14. In construing a statute, a court may not read into the statute something not within the manifest intent of the Legislature as gathered from the statute itself. [Lavrd v. Nationwide](#), 243 S.C. 388, 134 S.E. 2d 206 (1964).

\*2 Therefore, it is our opinion that no express or implied authority exists to allow the Board or DSS to purchase indemnity bonds.<sup>2</sup>

Sincerely,

Charles W. Gambrell, Jr.  
Assistant Attorney General

Footnotes

- 1 If DSS were to use moneys from its appropriation to purchase an indemnity bond, there may be a violation of [S.C. Code § 11-9-10 \(1976\)](#) which makes unlawful the expenditure of moneys for any purpose or activity except that for which the moneys are appropriated specifically.
- 2 As you are aware, the Legislature has spoken directly to the problem of insuring State employees for tort liability arising in the course of their employment. The State Budget and Control Board is authorized to provide tort liability insurance for the State, its departments, agencies, institutions, commissions, boards and State personnel. [S.C. Code § 1-11-140 \(1983 Cum. Supp.\)](#).  
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