

1977 WL 37166 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1977

**\*1 RE: Greenville County Police Service Bureau Reserve Program**

Mr. John W. Scott  
Director  
State Workmen's Compensation Fund  
1026 Sumter Street  
Columbia, SC 29201

Dear Mr. Scott:

You referred to this office an inquiry from Mr. David Bates, Safety Officer, Greenville County. He inquires whether participants in the county's proposed Police Service Bureau Reserve Program would be eligible for workmen's compensation coverage by the State Fund.

An opinion of this office dated March 24, 1976, a copy of which is attached, advised that Code § 72-456, the section relating to the State Fund, does not provide workmen's compensation coverage to individuals volunteering services to, and not under a contract of hire or employment with a governmental subdivision. The opinion advised that such persons are not 'employees' within the meaning of the workmen's compensation law.

I have discussed Greenville County's proposed matter with Mr. Bates in light of the referenced opinion. It is my understanding that the county proposes that participants in the projected program are to be more than mere volunteers. I am advised that prospective participants will be required to apply to the Reserve Program, and if accepted by the county, will receive some form of official county appointment. I am further advised that the appointment will carry with it prescribed duties and that internal discipline, control and personnel rules will be enforced by the county. Those participants who do not meet applicable standards or fulfill prescribed duties will have their appointment revoked. I am further advised that necessary equipment will be provided by the county. The county proposes to pay participants a nominal monetary compensation.

It is a close question as to whether this proposal would take participants in the Police Service Bureau Reserve Program out of the category of mere volunteers, described in the above referenced opinion, and into the category of 'employees' eligible for coverage by the State Fund. The necessary elements of supervision and control, prescribed duties, and authority to appoint and to terminate appear to be present, as this particular program was described to me. See Code § 72-11 as amended, and accompanying annotations.

The nominal compensation is the source of concern, since the more 'nominal' it becomes, the more the arrangement tends to resemble a non-covered, purely volunteer arrangement. However, the general rule stating the necessity for payment as a prerequisite to employee status is apparently based on requirements that there be a contract of hire and the necessary implication that such contracts require compensation. See, 1A Larson's Law of Workmen's Compensation, §§ 47-10, 47-40, 47-43. Since Code § 72-11 also includes employment by appointment, in addition to employment by contract of hire, and since Code § 72-456 expressly authorizes State Fund coverage of public officials or employees ' . . . who are on a partial or total fee basis or whose official duties require only part time . . . ', the problem of the nominal compensation is somewhat diminished.

**\*2** It is, therefore, my opinion that the State Fund would have the authority to cover participants in the above-described Reserve Program proposed by Greenville County.

Yours, very truly,

Edward E. Poliakoff  
Assistant Attorney General

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