

1976 S.C. Op. Atty. Gen. 137 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4317, 1976 WL 22936

Office of the Attorney General

State of South Carolina

Opinion No. 4317

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*1 SECTION 10(A) OF THE SOUTH CAROLINA PESTICIDE CONTROL ACT PROVIDES THAT THE DIRECTOR MAY ACCEPT 'EVIDENCE OF FINANCIAL RESPONSIBILITY' CONTAINING A DEDUCTIBLE CLAUSE NOT IN EXCESS OF FIVE HUNDRED DOLLARS. THE DIRECTOR MUST REQUIRE, AS A PREREQUISITE FOR APPLICATION APPROVAL, A SURETY BOND OR LIABILITY INSURANCE POLICY TO THE EXTENT THAT THE DEDUCTIBLE CLAUSE EXCEEDS FIVE HUNDRED DOLLARS.

TO: Dr. L. H. Senn
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QUESTION PRESENTED:

Whether, under the terms of Section 10(A) of the S. C. Pesticide Control Act, the Director must require additional evidence of financial responsibility to the extent of the total deductible or whether such additional requirement extends only to the amount in excess of the five hundred dollar level established by the Act.

STATUTES, CASES, ETC., INVOLVED:

Act No. 220 of the 1975 General Assembly; [Beaufort County v. Jasper County](#), 68 S.E.2d 421, 220 S.C. 469 (1952); [City of Columbia v. Niagara Fire Insurance Company](#), 154 S.E.2d 674, 249 S.C. 388 (1967); [Lewis v. Gaddy](#), 173 S.E.2d 376, 254 S.C. 66 (1970).

DISCUSSION OF ISSUES:

In Section 1, S. C. Pesticide Control Act, the General Assembly sets forth its purpose for adopting the legislation. The Legislature notes: that pesticides 'may seriously injure health, property, or wildlife if not properly used;' that, either by direct poisoning or gradual accumulation of poison in tissues, pesticides may injure man or animals; and, that drifting and washing of pesticides may cause damage both to aquatic life and to other crops or non-target organisms which happen to be contacted. On the basis of these hazards, the Legislature concluded that it was necessary to provide for regulation of the use and application of such pesticides. The S. C. Pesticide Control Act not only sets forth licensing requirements but, also, as regards commercial applicators, requires that the applicant present evidence of financial responsibility in the event of damage occurring from the application of pesticides.

Section 10(A) of the S. C. Pesticide Control Act directs that a commercial applicator's license shall not issue unless the applicant has provided evidence of financial responsibility acceptable to the Director. The subsection further demands that the amount of the financial responsibility 'be not less than five thousand dollars for property damage and public liability insurance.'

Among the several provisos to Section 19(A) is the following language relating to the permissibility of a deductible clause in either the liability insurance policy or the surety bond form of evidence. Specifically,

[P] Provided, further that the Director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five hundred dollars for aerial applicators and for all other applicators for the total amount of liability insurance or surety bond required herein; and provided, further, that if the applicant has not satisfied the requirement of the deductible clause it shall not be accepted by the Director unless such applicant furnish the Director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

*2 With respect to the first proviso, the Act permits a deductible clause up to and including the amount of five hundred dollars as against the total amount of liability insurance or surety bond required by the Act (at a minimum, five thousand dollars). A deductible clause is permissible for aerial applicators and for all other applicators.

As indicated above, the Legislature's apparent purpose in requiring evidence of financial responsibility was to assure that, in the event of damage resulting from the application of pesticides by a commercial applicator, a fund or funds would be available for reaching by the damaged parties. A construction of the above proviso which allowed applicators to present a deductible in the face amount of the statutory minimum for financial responsibility would totally defeat the purpose. It, therefore, would be improper. See: [Beaufort County v. Jasper County](#), 68 S.E.2d 421, 220 S.C. 469 (1952). Such a construction would negate the value of setting forth a statutory minimum for financial responsibility and would, thus, be repugnant to the meaning of the statute as a whole. See: [City of Columbia v. Niagara Fire Insurance Company](#), 154 S.E.2d 674, 249 S.C. 388 (1967).

With respect to the second proviso, the Director is forbidden from accepting an application in which the applicant has not met the deductible requirement. That deductible requirement, again, is an amount not exceeding five hundred dollars for both aerial applicators and for all other applicators as against the total amount of the statutory minimum.

It follows that non-compliance with the deductible requirement would include, for example, an attempt to present evidence including a deductible clause for an amount in excess of five hundred dollars. To the extent of the excess, the applicant's deductible clause would be in non-compliance. Further, to the extent of the excess, this proviso directs that the Director must require 'a surety bond or liability insurance [policy] which shall satisfy the amount of the deductible as to all claims that may arise in his [applicant's] application of pesticides.' That is, the Director must require additional evidence of financial responsibility in the amount of the excess, so that, at one time, the total amount of deductible may not exceed the statutory level of five hundred dollars.

The above construction of the second proviso comports with the Legislature's purpose in setting forth the deductible clause as an option in meeting the requirements of evidence of financial responsibility. A construction which concluded that the amount of the deduction, to the extent of five hundred dollars, had to be covered itself by a surety bond or an insurance policy, would negate the purpose of a deductible clause. In addition to the above cases, see: [Lewis v. Gaddy](#), 173 S.E.2d 376, 254 S.C. 66 (1970).

CONCLUSION:

In conclusion, the provisions of Section 10(A) of the S. C. Pesticide Control Act authorize the Director to accept evidence of financial responsibility containing a deductible clause up to and including the amount of five hundred dollars as against the statutory minimum of five thousand dollars for financial responsibility. To the extent that a deductible clause exceeds that five hundred dollar level, the Director must require, as a prerequisite for application approval, a surety bond or liability insurance satisfying the excess as to all claims arising and applicant's application of pesticides.

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