



ALAN WILSON
ATTORNEY GENERAL

January 21, 2025

Mark Brandenburg, Esquire
General Counsel
The Citadel
171 Moultrie Street, Bond Hall 182
Charleston, SC 29409

Dear Mr. Brandenburg:

You have asked our opinion concerning the legality of the State or its subdivisions entering into so-called "indemnification agreements" whereby the State agrees to "hold harmless" another entity. As we stated in Op. S.C. Att'y Gen., 2004 WL 2247469 (September 29, 2004), "[i]t is our longstanding opinion that a state agency possesses no authority to enter into indemnification agreements." We noted in the 2004 opinion that these opinions "date back at least to 1966." As we stated in a 1972 opinion, authored by former Attorney General McLeod,

[t]his problem has continually appeared in this Office, particularly in connection with the construction of Highway projects. It appears in other forms also, one of which will be referred to herein. It has been the consistent opinion of this Office that governmental agencies, in the absence of specific authority therefor, do not have the authority to execute 'hold harmless' clauses. The basis for this conclusion is that this State possesses sovereign immunity, with certain deviations therefrom in limited circumstances. These relate primarily to subjection of the State for claims for damages resulting from the operation of State-owned motor vehicles. The execution of a 'hold harmless' clause is nothing more nor less than subjection of the State or one of its political subdivisions to tort liability and, in the opinion of this Office, can only be done by the State itself through legislative enactment.

Op. S.C. Att'y Gen., 1972 WL 25432 (August 15, 1972).

As noted, this reasoning has consistently remained the opinion of this Office. I am enclosing for your review a number of opinions of this Office which so conclude.

Mark Brandenburg, Esquire

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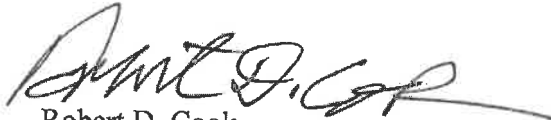
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Since our last opinion regarding indemnification clauses was written, the General Assembly has enacted § 11-35-2050, which ratifies and reinforces these opinions. This section provides:

[a]ny term or condition in any contract entered into by the State that requires the State to defend, indemnify, or hold harmless another person, must be void ab initio, unless such term is expressly authorized by law. All contracts must be governed by South Carolina law. Without limiting the applicability of Section 11-35-4230, the exclusive venue for any dispute arising out of or related to any contract is in South Carolina. Any contract containing any terms or conditions inconsistent with any of the foregoing are otherwise enforceable as if it did not contain such term or condition.

I trust this assists you and responds to your question.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a long, sweeping horizontal line extending to the right.

Robert D. Cook
Solicitor General

Enclosures