



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 31, 2004

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. O. Box 21428
Columbia, South Carolina 29221-1428

Dear Jeff:

In a letter to this office you questioned whether it is permitted in light of S.C. Code Ann. Section 33-1-103 (Supp. 2003) for a non-employee of a business to represent that business before a magistrate and receive compensation. Such provision states:

A corporation or partnership, as defined in this section, may designate an employee or principal of the corporation or partnership to represent it in magistrates' court...Notwithstanding the provisions of Chapter 5 of Title 40 or any other provision of law, the person so designated, while representing the corporation or partnership in magistrates' court, is not engaging in the unauthorized practice of law.

You referenced a decision of the State Supreme Court in 1992, In re Unauthorized Practice of Law, Rules Proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992) which authorized a business

...to be represented by a non-lawyer officer, agent or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR, in civil magistrate's court proceedings. Such representation may be compensated.

Enclosed is a copy of a prior opinion of this office dated September 17, 2002 which I believe is responsive to your inquiry. In its opening remarks, the opinion quotes the intent of the primary sponsor of the legislation codified as Section 33-1-103 not to limit the authority granted by the Supreme Court in Unauthorized Practice but to codify that authority. Such opinion concludes that noting the distinction between Unauthorized Practice and Section 33-1-103 in excluding the word "agent" from Section 33-1-103

...it would appear that, to the extent that it is inconsistent with or narrows the application of the Court's...(decision in Unauthorized Practice)...Section 33-1-103

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would be found by a reviewing court to be in violation of the separation of powers doctrine.

Commenting as to the interpretation of Section 33-1-103, the opinion further states that

It has been indicated that the intent in drafting Section 33-1-103 was "...to simply codify..."...(the decision in Unauthorized Practice)...(It must be presumed that the Legislature did not intend to expand or narrow the Court's decision in...(Unauthorized Practice)...Further, it would be the duty of a reviewing court to construe Section 33-1-103 in such a way to uphold its constitutionality if at all possible. It does not appear to be wholly unreasonable to interpret Section 33-1-103 and the...(Unauthorized Practice opinion)...as being consistent. Should it be ultimately determined, however, that the two are irreconcilable, deference should be given to the ruling of the Supreme Court.

Therefore, consistent with such opinion, Section 33-1-103 should be read consistent with the decision in Unauthorized Practice so as to authorize representation by a compensated agent.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General