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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 1, 1997

William M. Shepherd
County Administrator
Aiken County
828 Richland Avenue West
Aiken, South Carolina 29801

Re: Informal Opinion

Dear Mr. Shepherd:

I am in receipt of your letter dated April 30, 1997. You ask whether the program manager for the mobile home registration program of Aiken County would be considered a public officer. You have enclosed a copy of the job description for the position for analysis.

In Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907), the Supreme Court established the distinction between a public officer and an employee. A public officer is one who is charged with exercising some sovereign power, while an employee is one who merely performs duties under the direction of an employer. Id.; State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994). An important factor in the Court's Sanders analysis was that the public be concerned about the performance of the official duties. Sanders v. Belue, supra; State v. Thrift, supra. In Thrift, the court concluded that a reading of the common law definitions of public officials shows the greater the duty to the public at large, the more likely it is that the individual will be a public official. State v. Thrift, supra.

You have informed this Office that the position of program manager is not one created by statute or ordinance; there is no statute or ordinance that specifies the program manager's job duties or establishes qualifications which must be met by the holder; that the holder is not required to take an oath upon assumption of the position; and that the employment is "at will" rather than for a specific term of years.

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According to the job description, under the general supervision of the Aiken County Tax Collector, the program manager directs and coordinates the mobile home registration program to ensure that required registration is accomplished for all eligible mobile homes purchased and introduced or moved into Aiken County in accordance with State and County regulations. The program manager also plans and develops methods and procedures for implementing the program, directs and coordinates program activities, and exercises control over personnel responsible for specific functions or phases of the program. Additionally, the program manager confers and coordinates with other departments and agencies to ensure that registration information is provided to other agencies and departments as required. Further, the program manager reviews reports, data, and records of activities to ensure registration is being effected as required and that accurate registration data is maintained. Finally, the program manager reports to the tax collector, other departments and agencies to support related programs and activities. (The above stated information is taken directly from the job description provided to this Office).

In my opinion, based on the job description, the program manager for the mobile home registration program of Aiken County does not exercise a portion of the sovereign power of the state. Accordingly, the individual serving as program manager would not be considered a public officer. I note that if a court were to examine this issue, it would rely more heavily on the actual duties being performed rather than a description thereof.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General