



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 15, 1999

The Honorable Larry A. Martin
Senator, District No. 2
P.O. Box 142
Columbia, S. C. 29202

Re: Opinion Request regarding Good Samaritan Law for Engineers and Architects

Dear Senator Martin:

You have requested an opinion as to "the liability status of engineers under the current law when they volunteer their services in an emergency." I am enclosing for your review prior opinions by this Office which relate to the question you raise.

In summary, under the South Carolina Tort Claims Act, these volunteers would be protected from liability as employees of the State. The term "employee" under the Act means "any officer, employee or agent of the State . . . including . . . persons acting on behalf of or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation . . ." S.C. Code Ann. § 15-78-30(c) (Law. Co-op. Supp. 1998). The South Carolina Tort Claims Act also lists the following exception to the waiver of immunity:

The governmental entity is not liable for a loss resulting from:

...
(19) emergency preparedness activities . . . This exemption does not apply to vehicular accidents.

S.C. Code Ann. § 15-78-60(19). Thus, an engineer volunteering his or her services in an emergency would be protected under the South Carolina Tort Claims Act.

Engineers who volunteer to assist a governmental agency during an emergency would also be protected by the Volunteer Protection Act, federal legislation enacted in 1997. This Act provides

as follows:

. . . no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if –

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or owner of the vehicle, craft, or vessel to—
 - (A) possess an operator's license; or
 - (B) maintain insurance.

42 U.S.C.A. § 14503(a). Thus, federal legislation also protects the volunteer engineer acting within the scope of official duty.

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 kind regards, I am

Very truly yours,



Christie Newman Barrett
Assistant Attorney General