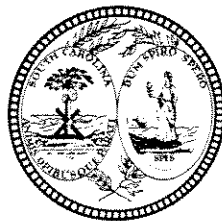


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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 19, 1995

The Honorable Glenn G. Reese  
Senator, District No. 11  
502 Gressette Building  
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Reese:

By your letter of May 3, 1995, to Attorney General Condon, you had sought an opinion regarding unemployment compensation. Specifically, you asked whether a majority owner of a corporation could draw unemployment income when his corporation does not make a profit and therefore cannot pay him a salary. If not, then you asked whether the cooperation's payment formula is reduced by a fair portion of the salary that is paid to the owner during profitable times.

In looking into the issues which you have raised, it quickly became apparent that any matter related to the determination of eligibility for unemployment compensation will necessarily depend on the facts and circumstances surrounding an individual claim. This Office does not have the facts necessary to advise you on these questions, nor do we have the jurisdiction or authority to make factual determinations. Op. Att'y Gen. dated December 12, 1983. You may wish to inquire further with personnel at the Employment Security Commission concerning your questions; Bill Funderburk is the new General Counsel of that agency; Bill Griffin is the former General Counsel and holds another position at the agency, and either gentleman would be in a position to advise you as to unemployment compensation policies, procedures, regulations, and the like. They may be reached by writing to the Employment Security Commission at Post Office Box 995, Columbia, South Carolina 29202.

The answers to your questions would depend on developing such facts as whether the company in question has filed for bankruptcy, surrendered its corporate charter, or otherwise taken steps to go out of business. Another question is whether seasonal employment is an issue. Yet another issue is whether the employer simply is not making

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a profit, as opposed to actually ceasing business. Is the owner available for employment? Is he out of work through no fault of his own? The effect of self-employment must also be considered. I am sure that you would recognize that unemployment compensation is not meant to be a means of "bailing out" an employer which simply is not making a profit, as opposed to helping in a situation in which an employee has lost his job through no fault of his own and is ready and willing to become employed in a suitable position. I am enclosing a copy of S.C. Code Ann. §41-35-110 (1976 & 1994 Cum. Supp.), to give you some idea of the conditions of eligibility for unemployment benefits; because you are inquiring about the owner of a company, there are apparently other considerations about which Mr. Griffin or Mr. Funderburk could advise.

If the individual on whose behalf you are inquiring has been denied unemployment compensation, perhaps there is an appeal or other procedure which he might follow to have the answers to his questions determined. If such a procedure is pending at this time, please understand this Office's long-standing policy of not commenting on pending litigation or administrative matters, as we strive to avoid even the appearance of usurping the court's (or the administrative body's) prerogative to decide matters before it. I would also observe that administrative interpretations placed on statutes by the agency charged with enforcement of those statutes are entitled to the most respectful consideration; courts generally will not overturn such administrative interpretations without cogent and compelling reasons. Faile v. South Carolina Employment Security Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976); Read Phosphate Co. v. South Carolina Tax Comm'n, 169 S.C. 314, 168 S.E. 722 (1933); Emerson Elec. Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986). In any event, the individual might wish to consider consulting private legal counsel to explore whatever options may be available to him, if he has not already done so.

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. I trust that it has responded to your inquiry as adequately as is possible under the circumstances.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

Enclosure