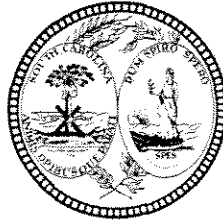


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 20, 1996

The Honorable Greg Smith
Senator, District No. 34
Post Office Box 142
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Smith:

You are seeking an opinion with respect to the question of who is covered by the term "officials of state government" as defined in Part IB, Section 72.75 of the 1996-1997 Appropriations Act.

Section 72.25 states that the "Board of the Medical University of South Carolina shall provide the hospital services to state employees and officials of state government at a rate not to exceed the payment rates to hospitals provided by the employee's program(s). Private physician fees, psychiatry, and all dental are not included."

LAW/ANALYSIS

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). *In construing a statute, the language used should be given its plain and ordinary meaning.* Merchant's Mut. Ins. Co. v. S.C. Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982). Moreover, it is proper to consider legislation dealing with the same subject matter as an aid to construction. Hartford Acc. and Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979).

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The term "official" is generally considered to mean "officer". Mullen v. Clark, 511 P.2d 1036, 1038 (Nev. 1973). In an opinion dated September 28, 1992, we distinguished between a state officer and state "employee". Quoting Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907), we noted that a public officer is "one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...". We further stated that "[o]ther relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary and bond or require oath or qualifications." (citing State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980)). We also quoted 63A Am.Jur.2d Public Officers and Employees, § 11 which states:

[p]ublic office ... is in a sense an employment, and is very often referred to as such. But there is a distinction between a public officer and a public employment which is not always clearly marked by judicial expression and is frequently shadowy and difficult to trace, and whether or not a particular public employee is a public officer is ultimately dependant upon the legal and factual circumstances involved.

In Cone v. Nettles, 308 S.C. 109, 417 S.E.2d 523 (1992), our Supreme Court concluded that a Sheriff and his deputy were state rather than county officials because:

- (1) The South Carolina Constitution established the office of sheriff and the term of office;
- (2) the duties and compensation of sheriffs and deputies are set forth by the General Assembly;
- (3) their arrest powers are related to state offenses; and
- (4) the Governor of South Carolina has the authority to remove a sheriff for misconduct and fill the vacancy.

Accordingly, concluded the Court, the State has the "potential power of control" over the office of sheriff, thus qualifying the sheriff as a state official. 417 S.E.2d at 525, quoting Gulledge v. Smart, 691 F.Supp. at 955.

Act No. 390 of 1996 is also instructive with respect to your question. Section 9 of the Act, adopted during the same legislative session as Proviso 72.25 states:

[n]otwithstanding any other provision of law to the contrary, including any provision of the Annual General Appropriations

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Act for FY 1996-97, members of the General Assembly must pay any co-payment or deductible as may be applicable for receiving services at a hospital facility in this State whether or not their services are provided by the MUSC hospital or its successor in interest.

It is a well-recognized principle of statutory construction that "the enumeration of particular things excludes the idea of something else not mentioned." Pa. Nat. Mut. Cas., Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d (Ct. App. 1984).

In this instance, the fact that members of the General Assembly are required by the new Act to pay the applicable co-payment or deductible is significant in interpreting Proviso 72.75. Thus, the term "state employees and officials of state government" would be deemed by a court to be all-inclusive. With the exception of "members of the General Assembly" as specifically excluded, the statute would be deemed to include all state employees and "officers" as noted above, thus intending to be all-encompassing except for the aforementioned exclusion.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph