# The State of South Carolina

## Office of the Attorney General

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Mr. Strom T. Johnston, Manager
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South Carolina Insurance Reserve Fund
P. O. Box 11066
Columbia, South Carolina 29211

Re: Volunteer Government Physicians

Dear Mr. Johnston:

You have asked the opinion of this Office concerning what you believe may be a conflict in two recently enacted pieces of legislation, Acts 352 and 447 of 1988. Your concern relates to a situation wherein a physician volunteers his professional services to a government agency, and this service is provided on behalf of the State agency and in furtherance of the agency's official business.

Generally, Act 352, as it relates to your inquiry, amends the South Carolina Tort Claims Act [Section 15-78-10, et seq.] in order to expressly include within its scope claims against government physicians, for both its remedial and immunity purposes. The amendments also provide a limitation upon the damages for which a governmental entity may be held liable where the claim was caused by the tort of a physician, acting within the scope of his profession. This damage limitation for government torts caused by government physicians is higher than the damage limitation for other government torts.

Act 447, as it relates to your inquiry, amends Section 33-55-210 as last amended by Act 149 of 1987. The 1987 amendment provided a qualified personal or individual immunity for physicians[1] who voluntarily provide medical services where no

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1. The immunity provided by Section 33-55-10, as amended by Act 149 of 1987 and Act 447 of 1988, is applicable to all "health care providers" as that phrase is statutorily defined. Your inquiry relates solely to "physicians;" thus, this opinion addresses that provision only as it affects volunteer physicians.

charges are made by the physicians for the medical services. The 1987 provision limited application of the qualified immunity to the provision of voluntary medical services "at any hospital, clinic, public school, non-profit organization, or any agency of the State or one of its political subdivisions where no charges are made by the [physician] for any medical services rendered at the facility." Act 149 of 1987. Act 447 of 1988 removed this limiting language and presently this provision makes no reference to the location where the voluntary medical services are rendered.[2]

Of course, the primary concern in construing legislation is to determine the legislative intent if it can be reasonably determined in the language of the legislation. McMillan Feed Mills, Inc. v. Mayer, 265 S.C. 500, 220 S.E.2d 221 (1975). The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S. C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S. C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

I.

You first ask whether the qualified immunity provided by Act 447 of 1988 to physicians voluntarily providing medical services is applicable only when the voluntary medical services are provided at the location of a charitable or public organization. I advise that Act 447 of 1988 specifically removed the limiting language that required the voluntarily medical services to be performed at designated locations in order for the physician to avail himself of the qualified immunity. Accordingly, the qualified immunity is applicable when a physician "renders medical services voluntarily and without compensation, expectation or promise thereof . . . [and] [t]he agreement to provide volun-

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2. Act 447 of 1988, just as its predecessor, requires certain formality with regard to the agreement to provide voluntary non-compensated medical services. This requirement is not the subject of your question and will not be discussed herein.

tary non-compensated service [is] made before the rendering of the service by the [physician]." Act 447 of 1988.[3]

II.

You next question the impact that this qualified personal immunity available to physicians, who provide voluntary medical services, has with reference to the liability of a governmental entity pursuant to the South Carolina Tort Claims Act when the voluntary physician is providing medical services on behalf of a governmental entity. You mention in your letter that Act 352 of 1988 amends the South Carolina Tort Claims Act to more clearly include actions against government physicians who perform professional services within the scope of their official duties. See, Sections 2, 7 and 10 of Act 352 of 1988.

Prior to this 1988 amendment, there existed some question as to whether or to what extent an action against a government employed physician was governed by the remedial and immunity provisions of the South Carolina Tort Claims Act. As your premise suggests, the Tort Claims Act now expressly provides that tort claims against a government employed physician, for professional services rendered by the physician while acting within the scope of his official duty, are governed by the Tort Claims Act. And thus, these claims must be brought against the governmental entity only and not the individual physician since the government physician is absolutely immune from personal liability with regard to any claim cognizable under the Tort Claims Act. Sections 15-78-70 (a) and (c). Moreover, the Tort Claims Act expressly includes within its scope claims for government torts committed by volunteers since "employee" as that term is used in the Tort Claims Act includes any "persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation. . . ." Section 15-78-30 (c), as last amended by Section 3 of Act 352 of 1988.

Thus, it plainly appears that a claim against a physician for the provision of medical services in the scope of his official duties is governed by the Tort Claims Act, whether the physician is a paid employee of government or a government

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3. Section 15-1-310 of the South Carolina Code provides a qualified or limited immunity for persons who render voluntary emergency medical care at the scene of an accident or emergency. The immunity provided by this "Good Samaritan" statute is similar to that provided by Section 33-55-210 as last amended by Act 447 of 1988.

volunteer. Of course, since the Tort Claims Act governs these claims, the Act must be examined to determine whether the governmental entity would be liable for torts committed by a volunteer physician acting within the scope of his official duties.

As you know, there are several exceptions to the waiver of sovereign immunity enumerated in Section 15-78-60, and one or more of these exceptions may in a given case be applicable; but, however, whether an exception is applicable would depend upon the particular facts. I do reference Sections 16-78-60 (a) (5) and (14). These exceptions to the waiver of the government's immunity apply to the exercise of discretion or judgment by the government employee and to claims covered by the South Carolina Workers' Compensation Act, respectively. Again, I emphasize that whether an exception is applicable would depend upon the particular facts, but in a given case, these exceptions to the waiver of sovereign immunity may be applicable to claims against the government for torts committed by a volunteer physician.

I also reference Section 15-78-50 (b) of the Act, which provides:

> In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

While this provision has not been the subject of judicial interpretation, its intent apparently is to preclude government liability in those situations where the individual tortfeasor would enjoy a personal privilege or immunity, if the individual tortfeasor were acting in a non-official capacity.[4] In other words, if the individual employee who committed the particular tort enjoys a personal immunity or privilege, the governmental entity would similarly enjoy the immunity or privilege. However, as previously mentioned, Section 33-55-210, as last amended by Act 448 of 1988, provides only a qualified personal immunity for a volunteer physician who provides medical services and is inapplicable where the physician is guilty of gross negligence or willful misconduct. Pursuant to Section 15-78-50 (b), the governmental entity would likely be entitled to this qualified immunity for torts committed by a volunteer physician

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4. I reemphasize that a government physician enjoys absolute personal immunity for all claims cognizable under the Tort Claims Act. Sections 15-78-70 (a) and (c).

when the physician would have been entitled to the immunity if he were acting in a non-governmental capacity.

In conclusion, I advise first that the qualified personal immunity provided in Section 33-55-210, as last amended by Act 447 of 1988, for the provision of voluntary health care services is applicable without regard to the location where the voluntary medical services are rendered; provided, the conditions of the statute are met. I further advise that the South Carolina Tort Claims Act [Section 15-78-10, et seq., as last amended by Act 352 of 1988] provides the exclusive tort remedy against the governmental entity for torts committed by a government physician, acting within the scope of his profession and acting within the scope of his official duties regardless whether the government physician was compensated for his services. Finally, whether the governmental entity would ultimately be liable under the Tort Claims Act for a tort committed by a voluntary physician acting within the scope of his official duties would depend upon the particular facts of a given case. Generally, however, a governmental entity enjoys any immunity that would be available to its employee if the tort were committed by a private individual, and thus, if the qualified immunity provided by Section 33-55-210, as last amended by Act 447 of 1988, were available to a voluntary physician, the governmental entity would similarly be immune.

Very truly yours,

Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED:

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