

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

November 29, 1988

Joseph A. Mack
Deputy Director
South Carolina Retirement Systems
1122 Lady Street
Columbia, South Carolina 29201

Dear Mr. Mack:

The question has arisen as to whether employees of the South Carolina Association of Counties may be eligible to participate in the State Health Insurance Plan pursuant to Section 1-11-142 of the Code of Laws of South Carolina (1976, as amended). For the reasons following, it is the opinion of this Office that the employees of the Association would be eligible to participate in the Plan.

Section 1-11-142 was added to the Code of Laws by Part II, Section 26 of Act No. 658, 1988 Acts and Joint Resolutions. In relevant part, Section 1-11-142 provides:

The Budget and Control Board through the South Carolina Retirement System is authorized to provide health and dental insurance coverage to counties under the State Health Insurance Plan.

...

It must thus be determined whether the South Carolina Association of Counties qualifies as a county, to be eligible to participate in the Plan.

The Association was established many years ago and is funded by dues paid by its members, the forty-six counties of this State. It is a non-profit corporation whose officers are county officials. We

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note that the real and personal property of the Association is exempt from taxation, and employees of the Association are eligible to participate in the South Carolina Retirement System and the State Deferred Compensation Program.

The General Assembly, by Joint Resolution No. 1383, 1968 Acts and Joint Resolutions, declared the Association to be an instrumentality of its member counties:

The South Carolina Association of Counties is hereby designated as an instrumentality of the counties which are members of the Association, and the governing bodies of such counties may appropriate necessary funds to provide for membership of their respective counties in the Association.

An "instrumentality" is "anything used as a means or agency." Laurens Federal Savings & Loan Assn. v. South Carolina Tax Commission, 236 S.C. 2, 9, 112 S.E.2d 716 (1960). Thus, the Association, as an instrumentality of the member counties, is to be considered an agency of the member counties, according to the General Assembly.

In an analogous situation in the area of corporate law, there are circumstances in which the identity of a second corporation will essentially be disregarded if that corporation, created by a first corporation, is actually under the domination of the first corporation to the extent that the second corporation is indistinct from the first or parent corporation. The second corporation is said to be a mere instrumentality of the first corporation. Mills v. Murray, 472 S.W.2d 6 (Mo. Ct. App. 1971). Considering the corporate nature of the counties and the Association created by the counties (governed by officials of the creating counties), application of the above-stated general rule might well be appropriate in this circumstance. Thus, the Association for some purposes could be the alter ego of its member counties. Id.

Due to the special relationship of the Association to its member counties, as stated by the General Assembly in Joint Resolution No. 1383 of 1968 and described above, it is the opinion of this Office that the employees of the South Carolina Association of Counties would be entitled to participate in the State Health Insurance Plan as would the employees of its member counties, as permitted by Section 1-11-142 of the Code, as newly adopted. We stress that this is a unique situation, as we are not aware of the addressing, by the General Assembly, of similar relationships between such associations and member political subdivisions; thus, today's conclusion would be applicable only to the South Carolina Association of Counties vis-a-vis Section 1-11-142 of the Code.

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With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

Robert D. Cook

ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS