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T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA S.C. 29211
TELEPHONE 803-758-2072

April 8, 1985

Robert M. Bell, Esquire
Aiken County Attorney
Post Office Drawer 1
Langley, South Carolina 29834

Dear Robert:

Thank you for your letter of March 12 addressed to Attorney General Medlock wherein you inquired whether there is potential civil liability on the part of Aiken County for the actions or omissions of the volunteer workers who assist the County's Emergency Medical Services Department by rendering emergency medical care in conjunction with the County's ambulance team. Mr. Medlock has requested that I reply to your inquiry. You have provided, pursuant to this Office's policy, a comprehensive memorandum of relevant law. I note that this memorandum is well drafted and reflects extensive research in the area. Having the benefit of your research greatly reduces the time necessary for this Office to prepare an opinion and thus we greatly appreciate the submission of the memorandum.

My response, as any must be in this area, is caveated with the understanding that potential civil liability exists in practically every situation and no opinion could be exhaustive of the multitude of theories of liability that may lie or the defenses thereto. I also caution that while I perceive certain areas where the County may be exposed to liability there is an absence of definitive law in this area, particularly in South Carolina. In addition, the legal liability of the County varies significantly depending upon the factual circumstances presented. Nonetheless, I will attempt to identify some specific areas where liability may exist.

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The general rule, as to which courts have said to be practically unanimous, is that in the absence of a statute creating liability, a county is not liable for the tortuous acts or omissions of its officers, agents, servants or employees, while these individuals are engaged in a governmental capacity in the discharge of a governmental function. 20 C.J.S. COUNTIES § 226.

With respect to liability to third parties caused by the tortuous actions of the rescue squad volunteer workers, the Aiken County Emergency Medical Services Department is a governmental entity and therefore, most actions ex delicto brought against a county will normally be barred by the doctrine of sovereign immunity. Tucker v. Kershaw County School District, 276 S.C. 401, 279 S.E.2d 378 (1981). Nevertheless, as you have identified, there are areas where pursuant to a specific statute a governmental entity may be held liable because of the actions of an agent working under its supervision. For example, a person may maintain a suit against a governmental entity when an agent of the government injures a person while negligently operating a motor vehicle while the agent is on official business. Sections 15-77-210 et seq., Code of Laws of South Carolina, 1976 (1984 Cum.Supp.). I caution as well that § 44-7-50 of the amended Code may constitute a waiver of sovereign immunity and thus subject the county to liability in situations where the county undertakes to provide medical assistance or service. This provision waives with certain qualification the doctrines of charitable and sovereign immunity as they relate to hospitals and other medical facilities in this State; and although I am aware of no case wherein this provision has been construed to waive immunity solely because of the provision of medical services, nonetheless the county should be cognizant of the possibility that this provision will be construed broadly and may cover the rendering of medical services by Emergency Medical Services Department. See, e.g., Shea v. S.C. Department of Mental Retardation, 279 S.C. 604, 310 S.E.2d 819 (S.C.App. 1983). In Shea, the Court of Appeals concluded that whether the Department of Mental Retardation was a medical facility as that phrase is used in the statute was a question of fact to be determined by a jury.

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In your inquiry you ask that we assume a change in the law which removes or modifies the doctrine of sovereign immunity as it relates to the county. Of course, any change in the doctrine of sovereign immunity may greatly expand the areas where the county may be held liable for the tortuous actions of its agents.

I concur with your discussion and conclusion with regard to whether the volunteers are agents of the County and accordingly agree that they most likely are agents of Aiken County. Since the volunteers are most probably agents of the county, the County could be liable, in the absence of sovereign immunity, for the tortuous acts of the volunteers committed within the scope of their official responsibilities. Of course, whether a volunteer is an agent of the County is a question of fact. Restatement of Agency 2d., § 16-220(b), 225. Nonetheless, as you recognize, there are several factors suggesting that these volunteers are agents of the County. They assist the County in the provision of a governmental service, the operation of an ambulance service. See. § 4-21-10. And more importantly, the County maintains the authority to control and direct the volunteers in this undertaking. Allstate Insurance Co. v. Stuart, 266 F.Supp. 494 (D.S.C. 1965), aff'd., 376 F.2d 263 (4th Cir. 1967); Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982); 82 A.L.R.3d 1213 Anno. Liability for Tort of Volunteer. Moreover, as you note as well, merely because the rescue squad volunteers are not compensated and serve "voluntarily", the receipt of compensation is not essential to the master and servant relationship. Pleasant v. Mathias, 247 S.C. 124, 145 S.E.2d 680 (1965).

You identified several cases wherein municipalities have been held liable for the torts of volunteer firemen. See. Cox v. Village of Greenwich, 33 A.D.2d 264, 306 N.Y.S.2d 987 (1970); Smith v. Ginther, 379 Mich. 208, 150 N.W.2d 798 (1967); Shaw v. Industrial Safety Supply Co., 23 Conn.Supp. 149, 178 A.2d 284 (1962). I concur that these cases are analogous to the situation presented herein and are persuasive upon whether a volunteer serving the County Emergency Department would be an agent of the county for purposes of tort liability of the county.

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In conclusion, I advise that the potential for liability of the County to third persons is clearly presented since most probably the rescue squad volunteer is an agent of the county if the act the volunteer is performing is one in which the General Assembly has specifically waived sovereign immunity. Consistent with this advice, I recommend obtaining adequate insurance to cover the county's liability for acts of these volunteers.

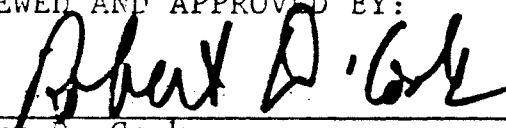
Very truly yours,



Edwin E. Evans
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions