

1984 WL 264719 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1984

Re: Opinion Request No. 869

*1 E. Ros Huff, Jr.
Senior Staff Attorney
State Worker's Compensation Fund
800 Dutch Square Blvd., Suite 160
Columbia, South Carolina 29210

Dear Mr. Huff:

You have asked whether a member of the South Carolina Land Resources Conservation Commission (Commission) is covered under the State Worker's Compensation Fund (Fund). For the reasons stated below, it is the opinion of this office that such Commissioner would be covered as long as the Commission has paid the annual charge provided by [§42-7-50, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#).

The first step in the analysis is to determine the Commissioner's status as an "employee" and the State's status as an "employer" within the meaning of the Worker's Compensation Act. At first blush it would appear that the statutory definition of "employee" would exclude a member of the Commission because each of the Commission members are appointed by the Governor. [§42-1-130, CODE](#); [§48-9-210, CODE](#). However, the General Assembly made it clear when it created the Fund that it intended the Fund to cover all state employees and officers notwithstanding anything to the contrary contained in [§42-1-130](#). [§42-7-60, CODE](#).

The next step is to determine whether a member of the Commission is an officer. Public officers are defined by statute as "... members of various State boards and other persons whose duties are defined by law." [§8-1-10, CODE](#). A member of the Commission fits both of these criteria. We can see little distinction between a board and a commission for the purposes of this opinion. Also, the Code provides a detailed definition of the duties and powers of the Commission. [§48-9-290, CODE](#). It, therefore, follows that a member of the Commission is an officer within the meaning of the relevant statutes. This determination also solidifies the State's status as an employer. [§§ 42-7-60, 42-1-140, CODE](#).

Once the determination is made that a member of the Commission is an officer, it becomes clear that he is covered by the Fund pursuant to [§42-7-60, CODE](#). Even if there were any doubt, such doubt must be resolved in favor of inclusion rather than exclusion. [Horton v. Baruch](#), 217 S.C. 48, 59 S.E.2d 545 (1950); [Deberry v. Coker Freight Lines](#), 234 S.C. 304, 108 S.E.2d 114 (1959).

We trust that this has sufficiently answered your question. If not, please feel free to call.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

Reviewed and Approved By:

Robert D. Cook

Executive Assistant for Opinions

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