

1983 WL 182015 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1983

*1 Honorable Thomas M. Marchant, III
Assistant Minority Leader
Post Office Box 816
Greenville, South Carolina 29602

Dear Representative Marchant:

Thank you for your letter of July 20, 1983 addressed to the Attorney General. Since I often represent state employees and agencies in civil actions, the Attorney General has asked that I reply to your letter. You have inquired (1) whether there is potential liability to the state or its political subdivisions where a prisoner who is allowed to work outside the correctional facility while participating in a work release, extended work release or a furlough program causes injury to a third person and (2) whether there is potential liability to the state or its political subdivisions when a person who is convicted of DUI and volunteers to perform public service work in lieu of imprisonment is injured while performing such service. Any response must be caveated with the understanding that potential liability exists in practically every situation and no opinion could be exhaustive of the multitude of theories of liability that may lie or defenses thereto. In addition, the legal liability of the state and its subdivisions varies significantly depending upon the factual circumstances. Nonetheless, I will attempt to identify some specific areas where liability may exist.

In most instances, prisoners who participate in work release programs are employees of private employers, and are monitored and supervised by the Department of Corrections. See § 24-13-60, Code of Laws of South Carolina 1976 (1982 cum. supp.). Therefore, ordinarily, if a prisoner while participating in a work release program causes injury to a third party, such person's recourse would be against the prisoner and/or his private employer. If the injured third person brings suit against the state or its political subdivisions, the action would normally be barred by the doctrine of sovereign immunity. Tucker v. Kershaw County School District, et al, 276 SC 401, 279 SE2d 378 (1981). Additionally, if the prisoner is injured while performing his assigned employment, he could seek workmen's compensation relief against his private employer. Hamilton v. Daniel International Corporation, 273 SC 409, 257 SE2d 157 (1979).

However, if the work release participant is employed by the state or any of its political subdivisions, there may be potential liability to the employee and governmental entity for that individual's negligence. Although, as herein noted, the state nor any of its political subdivisions is liable in an action in tort except by express enactment of the General Assembly, there are several situations wherein the General Assembly has expressly enacted provisions granting a person the right to maintain a suit against a governmental entity when its employee injures a third person. For example, an individual may maintain a suit against the governmental entity when its employee injures a person by negligently operating any vehicle while in and about official business. Sections 15-77-210 et seq., Code of Laws of South Carolina 1976. See also, for example, § 44-7-50, Code of Laws of South Carolina 1976, as amended (1982 cum. supp.), wherein sovereign immunity for public hospitals and medical facilities is waived by a statutory enactment. Thus, in those situations where immunity has been waived the governmental entity is likely liable for the negligent acts of prisoners employed by it.

*2 Furthermore, when a work release participant who is employed by a governmental entity, is injured on the job, the governmental entity is probably responsible for workmen's compensation relief. See, Hamilton v. Daniel International Corporation, supra; 1932 Op. Atty. Gen'l, #82-6, p. 10; § 42-1-470, Code of Laws of South Carolina, 1976.

As to your second inquiry, there may be potential liability to the state or its political subdivisions, if the person chooses to do public service work in lieu of imprisonment when convicted of DUI.¹ It has been held that a person who volunteers to do community work in lieu of imprisonment for the State, its political subdivisions or charitable organizations becomes the employee of the entity for which he is serving for workmen's compensation purposes. [Pruitt v. Workmen's Compensation Appeals Board](#), 68 Cal. Rptr. 12, 261 Cal. App. 2d 546 (1968); [Liability for injuries to Offenders Sentenced to Community Work](#), 30 Buffalo LR387 (1981); [Parsons v. Workers' Compensation Appeal Board](#), 126 Cal. App. 3d 629, 179 Cal. Rptr. 88 (1981). Therefore, although it is certainly not free from doubt in this state, a governmental entity for which the person does community service may be liable for workmen's compensation benefits when such person is injured while performing public service in lieu of imprisonment.

In conclusion, I advise that the potential for liability of the state or its political subdivision to third persons is clearly presented where the work release participant is an employee of a governmental entity and the employee is negligently performing an act for which the General Assembly has specifically and expressly waived immunity. In addition, I advise that there may be liability on behalf of the government to participants in the work release program and community service programs for workmen's compensation benefits where the participants are working for a governmental entity. However, sovereign immunity would protect the state or its political subdivision in most instances. In response to your specific request, it is recommended that to avoid governmental liability several provisions of the South Carolina Code would have to be amended.

If I can be of further assistance, please feel free to give me a call.

With best wishes,
Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

¹ Act #114 of 1983 Acts and Joint Resolutions provides for public service in lieu of imprisonment. The performance of public service in lieu of imprisonment is voluntary by the offender for a first offense.

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