

1982 S.C. Op. Atty. Gen. 8 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-6, 1982 WL 154976

Office of the Attorney General

State of South Carolina

Opinion No. 82-6

February 24, 1982

**\*1 SUBJECT: Workmen's Compensation, Prisoners, Corrections**

(1) Where County prisoners are assigned by County officials to perform work outside of the prison facility related to a proper County function and such work is without compensation, such prisoners are not covered under the workmen's compensation law unless the County has elected to provide for such coverage under [§ 42-1-500, Code of Laws of South Carolina \(1976\)](#).

(2) Absent coverage under [§ 42-1-500](#) or some other express waiver of Sovereign Immunity the County and its agencies would be immune from suit for negligence related to a prisoner who is injured while performing work as discussed above.

TO: MR. Robert Turnbull

Senior Staff Attorney

State Workmen's Compensation Fund

1026 Sumter Street

Columbia, South Carolina

**QUESTIONS:**

1. Is a County prisoner who is assigned by County officials to perform work outside of the prison facility related to a proper governmental function covered under the Workmen's Compensation Law where such work is performed without compensation?
2. Where a County has elected not to provide coverage for its prisoners under [§ 42-1-500](#), is the County liable for negligence resulting in an injury to one of its prisoners while assigned as discussed above?

**Discussion:**

Prisoners are generally not held to be covered by Workmen's Compensation because their status precludes the possibility of a sufficient meeting of the minds to constitute a contract of employment. [Hamilton v. Daniel International, et al., 257 S.E.2d 157, 273 S.C. 409, \(1979\)](#). The [Hamilton](#) case provides for an exception to this general rule for inmates injured while on work release status. The key consideration here is the voluntary nature of work release. The [Hamilton](#) court found great significance in the fact that the employment was a voluntary arrangement between the prisoner and his employer, Daniel International. Hamilton was paid by the employer and otherwise treated in the same fashion as other employees. In the fact situation which you describe the prisoner receives no pay and is merely engaged in activities outside of the County facility as part of his prison work assignment. Therefore, your example would not be covered by the [Hamilton](#) exception.

Another exception to the general rule is found in [§ 42-1-480, Code](#), which mandates workmen's compensation coverage for South Carolina Department of Corrections inmates in certain circumstances. This exception does not cover county prisoners. In fact, the General Assembly specifically made coverage of county prisoners optional. [§ 42-1-500, Code](#). If the County in question has elected not to provide coverage for its prisoners, there will be no workmen's compensation coverage under the facts as you have described them. See 81 Am.Jur.2d, Workmen's Compensation, § 166; 60 Am.Jur.2d, Penal and Correctional Institutions, § 28; Larson, Workmen's Compensation Law, § 47.31.

\*2 Your second question is answered by a review of the doctrine of Sovereign Immunity in South Carolina. This State adheres to the time-honored proposition that the sovereign may not be sued for negligence without its permission. [Furr v. City of Rock Hill](#), 235 S.C. 44, 190 S.E.2d 697 (1959); [Hazard v. South Carolina State Highway Department](#), 264 S.C. 386, 215 S.E.2d 438 (1975); [McKenzie v. South Carolina Highway Department](#), Opinion No. 21494, filed June 18, 1981. This includes the State and all of its political subdivisions. [All v. County of Barnwell](#), 29 S.C. 161, 7 S.E. 58 (1887).

In order to sustain a cause of action against a County the plaintiff must show an express waiver or Sovereign Immunity manifested by a plain and positive provision of statute. [Brazzell v. City of Camden](#), 121 S.E.2d 221, 238 S.C. 580 (1961). In your example, unless the injury is covered by a statute or County ordinance, the prisoner's negligence claim against the County would be barred by Sovereign Immunity.

Conclusion:

Because the coverage of County prisoners is an optional provision of the Workmen's Compensation Law, there is no coverage for such prisoners in Counties which have elected not to avail themselves of the coverage option. Such Counties will be immune from a negligence claim by an injured prisoner absent an express statutory waiver of Sovereign Immunity. Of course, Counties must always be cognizant of potential civil rights liability under § 42 USC 1983.

Clifford O. Koon, Jr.

Assistant Attorney General

1982 S.C. Op. Atty. Gen. 8 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-6, 1982 WL 154976