

1981 WL 157798 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 27, 1981

*1 Honorable T. M. Nelson
Chairman
South Carolina Industrial Commission
1800 St. Julian Place
Columbia, South Carolina 29204

Dear Commissioner Nelson:

Your request for an opinion dated May 6, 1981 has been referred to me for reply.

First, you asked whether the Commission may promulgate a regulation that would allow the Commission to consider some cases only on the record and briefs, without oral arguments. [Section 42-3-30, Code of Laws of South Carolina](#) (1976 as amended), authorizes the Commission to promulgate rules and regulations 'necessary to implement' the workmen's compensation law. The only restraint on the rule making authority of the Commission would be the general restraint that the Commission may not expand or alter the statutory law with its rules. [Section 42-17-40 of the Code](#) provides for the right to review by the Full Commission; however, there is no statutory requirement that oral arguments must be heard. Accordingly, the Commission may promulgate such a rule pursuant to the procedure set forth in the Administrative Procedures Act.

Second, you asked whether the clincher releases are public after a hearing in light of the recent Blue Cross-Blue Shield decision in the Supreme Court. A previous opinion to former Commissioner Trask, a copy of which is attached, touched on this subject. The Supreme Court indicated that the key to this issue is whether there has been a hearing. If there has been a hearing, then the private nature of the dispute loses its confidential status. It is the opinion of this office that after a hearing, such clincher releases would be public.

Thirdly, you asked whether the State Workmen's Compensation Fund may employ local attorneys when their attorneys are unable to handle the caseload. [Code Section 42-7-30](#), as amended in 1980, states in pertinent part:
Any extra legal services that may be required shall be performed by attorneys selected by the Director also with the approval of the Attorney General.

Hence, if extra legal services are required to perform the caseload of the State Fund, the Director has the authority to select and employ local attorneys subject to the prior approval of the Attorney General.

I trust that this answers your questions. If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

James W. Johnson, Jr.
Assistant Attorney General

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