

1982 WL 189450 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1982

*1 Mr. William A. Moore, CPCU
Insurance Reserve Fund Officer
Division of General Services
300 Gervais Street
Columbia, SC 29211

Dear Sir:

You have asked the following questions in your letter dated September 23, 1982:

1. What consequences, if any, would our coverage of the State agencies and political subdivisions have on the South Carolina Supreme Court's consideration of the defense of sovereign immunity now available to these entities?
2. Even though State agencies and the political subdivisions of the State presently enjoy, with certain narrow exceptions, sovereign immunity to suit ex delicto, to what sorts of suit are they or may they be nonetheless liable?

At the present time, the State of South Carolina and its political subdivisions possess sovereign immunity in actions ex delicto. See, [Kinsey Construction Company, Inc. v. S.C. Dept. of Mental Health](#), 272 S.C. 168, 249 S.E.2d 900; [Tucker v. Kershaw County School District](#), (S.C.) 279 S.W.2d 378; see also, [Hayden v. McLeod](#), Civil Action No. 82-473 (D.S.C., order filed September 17, 1982). Most probably, the acquisition of insurance by a public body would not be viewed by our Supreme Court as a waiver of that body's immunity [see, [McKenzie v. City of Florence](#), 234 S.C. 428, 108 S.E.2d 825 which relies upon [Stephenson v. City of Raleigh](#), 232 N.C. 42, 69 S.E.2d 195; see also, 12 S.C.L.Q. 478; [Jones v. County of Lancaster](#), Civil Action No. 80-0742-5 (D.S.C., order filed July 23, 1980)] whether the action ex delicto is one involving false imprisonment, assault and battery, defamation, malicious prosecution, or some other tort. Of course, State agencies may already be held liable for the unconstitutional taking of a person's property [see, e.g., [Lail v. S.C.S.H.D.](#), 244 S.C. 600, 136 S.E.2d 306, S.C. CONST. art. I, § 13] but not in an action brought pursuant to 42 U.S.C. § 1983 [[Quern v. Jordan](#), 440 U.S. 332]; and political subdivisions of the State can be held liable under either circumstance, depending upon the particular facts. See, e.g., [Brown v. School District](#), 251 S.C. 220, 161 S.E.2d 815; [Monell v. N.Y. Dept. of Public Welfare](#), 438 U.S. 658.

Best wishes,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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