

1982 WL 189451 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 30, 1982

*1 Dr. A. Baron Holmes, IV
President
South Carolina School for the Deaf and Blind
Spartanburg, South Carolina 29302

Dear Baron:

You have asked whether a proviso for the School for the Deaf and Blind in the 1983 Appropriations Act which allows the school to contract for a physician would make that doctor a state employee. The proviso reads as follows:

Provided, Further, That the School for the Deaf and Blind is authorized to contract for the services of a physician and to provide office space for the physicians to be used to treat both students of the school and private patients; Provided, Further, That the School shall charge the physician a fair market rental for the office space.

General law offers no absolute rule for determining whether a person is an independent contractor or an employee and each situation must be decided upon its own facts. 41 AM.JUR. 2d Independent Contractor § 5. The South Carolina Supreme Court applies a test of employment which is '[W]hether there exists the right and authority to control or direct the particular work or undertaking as to the manner or means of its accomplishment.' [Anderson v. West, 270 SC 184, 241SE2d 551, 553 \(1978\)](#). Applying this test to the physician at the school indicates that the school has no right of control over him which would make him an employee. The proviso uses the words 'contract for the services of a physician' rather than employ such a person. This language indicates that the legislature contemplates a purchase of independent services rather than the hiring of an employee and control over his work. This conclusion is supported by the physician's being charged for his office space at the school which he may use for private patients as well as students. I am also advised by your staff that, except for his being physically located on campus and having to provide certain services for students such as doing evaluations and treating injuries, the school has no right of control over the physician and his work and does not attempt to exercise any.

The above facts indicate that the physician in question is an independent contractor of the school, not an employee of it. In addition, no state law indicates that he should be treated as an employee for the purpose of state personnel regulations and retirement. But see § 8-23-60 of The Code of Laws of South Carolina (1976), as amended (Deferred Compensation).

If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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