

1980 WL 121116 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 21, 1980

***1 RE: Opinion Request**

Mr. Duane A. Earles
Director
Coverage & Compliance
South Carolina Industrial Commission
1800 St. Julian Place
Columbia, South Carolina 29204

Dear Mr. Earles:

You have asked for an opinion concerning whether a proposed plan by the South Carolina Merchants Association complies with [Section 42-5-20 of the Code of Laws of South Carolina](#), 1976. The pertinent portion of this statute provides as follows: The Commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workmen's Compensation Law for the purpose of qualifying as self-insurers.

As I understand the proposed plan, membership in the South Carolina Merchants Association would be the first prerequisite for participating in this self-insurance program. Additionally, I am informed that applications will be considered only for members of the Association who maintain and conduct a merchandise business at retail in a shopping center, shopping mall, department store, chain store or shops where a minimum of fifty (50%) per cent of gross receipts is derived from the sale of all kinds of articles and commodities for personal and household use and consumption. Moreover, applications will not be considered from service stations, 24-hour convenience stores, homebuilding supply stores, tire and recapping stores, and any other retail outlets that the Board of Trustees of this proposed plan elects to exclude as not being engaged in a business of a similar nature.

I am further informed that the following types of businesses would be considered by the Merchants Association for membership in their proposed plan:

- (1) Department stores
- (2) Clothing stores
- (3) Shoe stores
- (4) Variety stores
- (5) Hardware stores
- (6) Building materials
- (7) Jewelry stores
- (8) Auto accessories

- (9) Sporting goods
- (10) Furniture stores
- (11) Grocery stores
- (12) Office supplies & Furniture
- (13) Florists and gift shops
- (14) Appliance stores
- (15) Camera shops
- (16) Boat dealers
- (17) Fabric shops

Whether the above listed businesses are 'businesses of a similar nature' is a decision that must be made solely by the Industrial Commission. However, in an effort to assist the Commission, we have determined that the term 'similar' has generally been interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, is somewhat alike, or has a general likeness to some other thing but is not identical in form and substance, although in some cases similar may mean identical or alike. See Words and Phrases, 'Similar', Volume 39, pages 395-400.

With this definition in mind, 'businesses of a similar nature', as used in Section 42-5-30, would contemplate businesses with similar risks in light of the Workmen's Compensation Law; the mere fact that all of the businesses listed above are retail stores would not appear to be sufficient in and of itself to qualify these businesses as 'businesses of a similar nature' for purposes of 42-5-30.

*2 Accordingly, it is the opinion of this Office that businesses of a similar nature contemplates businesses of similar risks in the context of the Workmen's Compensation Law and, if the only similarity shared by two or more businesses is that they are retail businesses, this would be insufficient to constitute businesses of a similar nature for purposes of Section 42-5-30. Again, it must be noted that the decision on whether the plan proposed by the South Carolina Merchants Association consists of businesses of a similar nature is a decision that rests solely with the Industrial Commission.

If you have any questions, please do not hesitate to contact me.

Sincerely,

James W. Johnson, Jr.
Assistant Attorney General

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