



HENRY McMASTER
ATTORNEY GENERAL

February 5, 2009

The Honorable Michael W. Gambrell
Member, House of Representatives
436-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Gambrell:

In a letter to this office you questioned whether the Williamston Rescue Squad would qualify as a “claimant agency” for purposes of S.C. Code Ann. §§ 12-56-10 et seq., this State’s Setoff Debt Collection Act (“the Act”), based upon its being considered a “quasi-governmental entity.” A “claimant agency” for purposes of the Act is defined as “...a state agency, board, committee, commission, public institution of higher learning, political subdivision, or other governmental or quasi-governmental entity of any state...” (emphasis added). As referenced in Gardner v. South Carolina Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), the Act was established for the benefit of recognized claimant agencies who are owed delinquent debts by taxpayers allowing them a means of collecting these debts through any tax refund owed the debtor.

According to the other materials relevant to your inquiry forwarded to this office, the Williamston Rescue Squad is a non-profit emergency medical service that provides EMS coverage to a portion of Anderson County pursuant to a contract with Anderson County. You stated that the Rescue Squad contracted with Anderson County to provide emergency medical services that the County is required by law to provide. A letter dated November 5, 2008 to Attorney General McMaster stated that “...due to the fact that Anderson County does not provide EMS coverage by a county agency, but provides this coverage through a contract with a non-profit EMS provider, we should be considered a quasi-governmental body” for purposes of the Act.

A copy of the agreement between the Williamston Rescue Squad (the “Contractor”) and Anderson County (“the County”) was also forwarded to this office. That contract states in part as follows:

Contractor is an independent contractor and is not an agent of the County. This Agreement shall not be construed as establishing an employment agreement, a partnership, a general agency, or a joint venture...

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...collection efforts...(by the Contractor)...shall be within the sole discretion of the Contractor, and Contractor agrees to indemnify and hold harmless the County from any and all liability and expenses including, but not limited to, attorney fees arising from any collection efforts by Contractor, its employees and agents related thereto...

County hereby disclaims and Contractor hereby releases County and County Council, its officers, servants, employees and agents from any and all liability...

The parties acknowledge that Contractor is providing the services contemplated herein as an independent contractor and is neither agent, employee, servant, partner, nor joint venturer of the County or of the other Rescue Squads...

Contractor hereby represents and warrants that it is a non-profit corporation duly organized and validly existing in good standing under the laws of the State of South Carolina.

As set forth by the referenced agreement, the Williamston Rescue Squad is an independent contractor. In its decision in Wiredata, Inc. v. Village of Sussex, 751 N.W.2d 736 (Wis. 2008), the Wisconsin Supreme Court recognized the distinction between a quasi-governmental corporation or a governmental entity and an independent contractor for purposes of that State's open records law. In Stephens v. Correctional Services Corp., 428 F.Supp. 580 at 583 (E.D. Tex. 2006), the district court determined that the defendant, a private jail corporation, was not entitled to sovereign immunity since it was not established as a governmental entity particularly commenting that "...CSC has failed to direct the court to a statute granting it governmental or quasi governmental status...and the court has found none." Similarly, in City of Alton v. Sharyland Water Supply Corp., 145 S.W.3d 673 (Tex. Ct. App. 2004) the court found that there was no statute or other legislative act granting sovereign immunity for an independent contractor which contracted with the City of Alton for waste water collection. In Perales v. Thornburgh, 762 F.Supp. 1036 at 1068 (S.D.N.Y. 1991) the court found that the actions of Qualified Designated Entities (QDE) which assisted the Immigration and Naturalization Service (INS) with amnesty programs were not attributable to the government "...because they were not caused, condoned or approved by the INS." The court commented that

[f]irst, we find that the plaintiffs have not carried their burden of showing that the QDEs were agents of the INS and not mere independent contractors. Accordingly, we expressly decline to adhere to our previous, uninformed characterization of the QDEs as "quasi-governmental agencies..."

Ibid. Therefore, the courts have made a distinction between independent contractors and the treatment of such as governmental or quasi-governmental agencies. As a result, in the opinion of this office an independent contractors who contract with a government to perform a particular service should not necessarily be considered governmental or quasi-governmental entities.

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As to the Williamston Rescue Squad, the contract referenced above clearly states that the rescue squad is an independent contractor, not an agent of the County. Moreover, by the various provisions specifying that the County is held harmless from any liability for any actions of the rescue squad and that the rescue squad "...is neither...(an)...agent, employee, servant, partner, nor joint venturer of the County....", in the opinion of this office the Williamston Rescue Squad should not be considered a quasi-governmental agency for purposes of the Act. Compare: Op. Atty. Gen. dated August 3, 2001 (determined that the Williamsburg County Memorial Hospital, established by state law as a hospital public service district, qualified as a "claimant agency" for purposes of the Act); Op. Atty. Gen. dated December 11, 2001 (holding that the Emerald Center Multi-County Disabilities and Special Needs Board is a "political subdivision" having been created by legislation with a board appointed by the Governor to function as legislatively mandated).

With kind regards, I am,

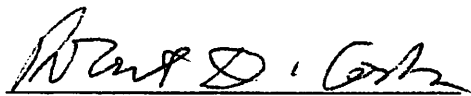
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General