

1978 S.C. Op. Atty. Gen. 94 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-67, 1978 WL 22548

Office of the Attorney General

State of South Carolina

Opinion No. 78-67

April 3, 1978

***1 SUBJECT: Physicians and Dentists**

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of Act No. 182. The classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional.

TO: William S. Hall, M.D.
State Commissioner of Mental Health

QUESTION:

Is the exemption of physicians and dentists from the one hundred thousand dollars liability limitation of Act No. 182 of 1977 unconstitutional?

AUTHORITIES:

Act No. 182

[Beaufort County v. Jasper County](#), 220 S. C. 469, 68 S. E. 2d 421 (1952);

[Byrnes Administrators v. Stewart's Administrators](#), 3 Desaus 466 (S. C., 1812);

[Casey v. South Carolina State Housing Authority](#), 264 S. C. 303, 215 S. E. 2d 184 (1975);

[Dandridge v. Williams](#), 397 U. S. 471 (1970);

[Dantzier v. Callison](#), 230 S. C. 469, 94 S. E. 2d 177 app. dis. 352 U. S. 939 (1956);

[Frontiers v. Richardson](#), 411 U. S. 677 (1973);

[Forziati v. Board of Registration in Medicine](#), 128 N. E. 2d 789 (Mass. 1955);

[Johnson v. Thompson](#), 236 S. C. 135, 113 S. E. 2d 417 (1960);

[Spring hills, Inc. v. Consumer Product Safety Commission](#), 434 F. Supp. 416 (D.C.S.C. 1977);

[State v. Solomon](#), 245 S. C. 550, 141 S. E. 2d 818 (1965);

[Thompson v. Hoffman](#), 263 S. C. 314, 210 S. E. 2d 461 (1974);

41 C. J. S. Hospitals § 8;

70 C. J. S. Physician and Surgeon § 36;

DISCUSSION:

The question has been raised as to the constitutionality of Act No. 182 of 1977. This act modifies the doctrines of charitable and sovereign immunity as they relate to hospitals and other medical facilities in South Carolina to the extent that such facilities are liable for the acts and omissions of any employee of the facility up to the amount of one hundred thousand dollars (\$100,000.00). Act No. 182 also bars any further action against the specific employee when an action is brought under its provisions with the exception that this bar does not apply to 'licensed physicians and dentists.' This exception creates the constitutional question. Is the separation of dentists and doctors from the other class of employees in Act No. 182 discriminatory to these professional persons?

Initially, it should be noted that South Carolina historically favors a presumption of constitutionality when examining acts passed by the legislature. See *Byrne's Administrators v. Stewart's Administrators*, 3 Desaus. 466 (S. C. 1812); *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. 2d 421 (1952); *Dantzler v. Callison*, 230 S. C. 75, 94 S. E. 2d 277 app. dis. 352 U. S. 939 (1956); *Johnson v. Thompson*, 236 S. C. 135, 113 S. E. 2d 417 (1960); *Thompson v. Hoffman*, 263 S. C. 314, 210 S. E. 2d 461 (1974); *Casey v. South Carolina State Housing Authority*, 264 S. C. 303, 215 S. E. 2d 184 (1975); *Spring Mills, Inc., v. Consumer Product Safety Commission*, 434 F. Supp. 416 (D.C.S.C., 1977).

*2 In addition to the presumption of constitutionality, there is no per se constitutional objection to a state legislation which affects some groups of citizens differently than others. See, *State v. Soloman*, 245 S. C. 550, 141 S. E. 2d 818 (1965). As long as the classification does not involve a suspect class and there is a reasonable factual basis for the classification there is no Fourteenth Amendment problem. See *Frontiero v. Richardson*, 411 U. S. 677 (1973). *Dandridge v. Williams*, 397 U. S. 471 (1970).

The exemption of licensed physicians and dentists from the one hundred thousand (\$100,000.00) dollar limitation does not involve 'race, alienage, national origin or sex or some lesser area of public interest' and therefore is not a suspect classification. *Frontiero v. Richardson*, *ibid.* And, there is a sound factual basic for the distinction.

Unlike the other employees of hospitals and medical facilities, the physician has a personal relationship with the patient. Also, the physician is held to owe a high moral duty to serve the public who seek their assistance. *Forziati v. Board of Registration in Medicine*, 128 N. E. 2d 789 (Mass., 1955). Furthermore:

Since the relationship between a physician and his patient is confidential, all dealings between them will be closely scrutinized, particularly those inuring to the benefit of the physician. 70 C. J.S. Physicians & Surgeons § 36.

Due to this higher moral duty and close relationship, an important public to being upheld by exempting physicians and dentists from the monetary limitation.

It should also be noted that, absent a statutory change, a private or public medical facility is not generally liable for the torts of its professional staff. See 41 C. J. S. Hospitals § 8. In light of this general exemption from liability for staff's torts, it appeals that where there is a reasonable basis for the classification, the legislature may alter charitable and sovereign immunity in any manner and to whatever extent it sees fit.

CONCLUSION:

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of Act No. 182. The classification of this Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional.

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