1978 S.C. Op. Atty. Gen. 182 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-147, 1978 WL 22615

Office of the Attorney General

State of South Carolina
Opinion No. 78-147
August 3, 1978

***1 SUBJECT: School Districts, Insurance**

Political subdivisions of the State, including school districts must purchase tort liability insurance for themselves and their employees from the Division of General Services exclusively, and from no other source,

TO: John C. Cone
Executive Director
S.C. School Boards Association

QUESTION:

Are political subdivisions of the State, such as school districts, permitted to procure tort liability insurance from any source other than the Division of General Services?

STATUTES AND CASES:

60 STAT, Act No. (R590, S758, 1978);

60 STAT, Act No. 182, § 4 (1977);

59 STAT, Act No. 744 (1976);

58 STAT, Act No. 1154 (1974);

58 STAT, Act No. 371 (1973);

Jones v. S.C. Highway Dept., 247 S.C. 132, 136, 146 S.E.2d 166 (1966);

1977 S.C. Senate Journal, pp. 1586–88.

DISCUSSION:

S. C. Code Ann. § 1–11–140 (1976), as amended, authorizes the State Budget & Control Board, through the Division of General Services, to provide insurance for the State, its departments, agencies, institutions, commissions, boards and the personnel employed by the State in order to protect the State and its employees against tort liability. Section 1–11–140 also provides for such insurance for physicians or dentists employed by the State against any tort liability arising out of the rendering of professional services. All of these provisions act contained in the first paragraph of § 1 of the Act.

The second paragraph of the Act states as follows:

Any political subdivision of the State, including, without limitation, municipalities, counties and school districts, may procure such insurance under the terms hereof for itself and for its employees in the same manner herein provided for the procurement of such insurance for the State, its entities and its employees.

The very next paragraph of the statute states:
The procurement of tort liability insurance in the manner herein provided shall be the exclusive means for the procurement of such insurance. (emphasis added)

The last paragraph of § 1–11–140 provides authority to purchase and offer insurance to 'governmental' and 'eleemosynary' hospitals to protect such hospitals against tort liability. With regard to these entities, the statute states:
Notwithstanding any other provision of this section, the procurement of tort liability insurance by a hospital supported wholly or partially by public funds contributed by the State or any of its political subdivisions in the manner herein provided shall not be deemed to be the exclusive means by which such hospital may procure tort liability insurance. (emphasis added)

The pertinent language contained in § 1–11–140 is not ambiguous. It clearly provides authorization to the State, and its agencies, and to political subdivisions, specifically school districts, and to certain types of hospitals, to purchase tort liability insurance. It is clear from the language of the statute that the purchase of such tort liability insurance is not mandatory, but is optional at the discretion of the particular agency, political subdivision, or hospital. However, if the agency or political subdivision chose to purchase insurance, the third paragraph of § 1 of § 1–11–140 clearly states that the procurement of the insurance must be made through the Budget and Control Board, through the Division of General Services, which is the only source mentioned in the first two paragraphs of § 1–11–140 through which insurance can be obtained. It is equally clear from the language of the statute that the 'governmental' and 'eleemosynary' hospitals and permitted to purchase tort liability insurance from sources other than the Division of General Services.

***2** Nor does a review of the history of the statute reflect that any different conclusion should be reached. What is now § 1–11–140 was originally enacted in 1973 in 58 STAT, Act No. 371 (1973), authorizing the Division of General Services to provide insurance for personnel employed at the various medical institutions. Act No. 371 was subsequently amended by 58 STAT, Act No. 1154 (1974), authorizing the Division of General Services to provide tort liability insurance for all personnel employed by the State. This amendment also provided for the first time authorization for political subdivisions to purchase tort liability insurance for its employees 'in the same manner herein provided for the procurement of such insurance for State employees'. Act No. 1154 did not provide an 'exclusive means for the procurement of such insurance, and it appears that, at that time, the purchase of tort liability insurance by a political subdivision, such as the school district, from a source other than the Division of General Services would not have been precluded. Another amendment was added in 1976 by way of 59 STAT, Act No. 744 (1976) providing additional authority for the Division of General Services to purchase insurance for physicians or dentists employed by the State. There still existed no provision restricting the procurement of tort liability insurance.

However, in 1977, § 1–11–140 together with several other Code sections, was extensively amended. These amendments contained in 60 STAT, Act No. 182, § 4 (1977) were proposed by the Senate Judiciary Committee, and subsequently adopted. 1977 S.C. Senate Journal, pp. 1586–88. In these amendments for the first time appeared the language in the present statute which makes the Division of General Services the exclusive source for the purchase of tort liability insurance by the State agencies and political subdivisions. There is nothing in this legislative history to indicate that the General Assembly intended anything other than that which the plain language of the statute states.

The latest amendments to § 1–11–140, found in 60 STAT, Act No. (R590, S758, 1978) retain the 'exclusive purchase' provisions which are the subject of this opinion.

The South Carolina Supreme Court has stated that where the language of the statute is unambiguous, it is not subject to construction to determine the intent of the General Assembly.
The first rule of construction in the interpretation of statutes is that of intention on the part of the Legislature and where the terms of the statute are clear and not ambiguous, there is no room for construction, and courts must apply them according to their literal meaning . . ..

There is no safer nor better rule of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly says.
Jones v. S.C. Highway Dept., 247 S.C. 137, 136, 146 S.E.2d 166 (1966).

CONCLUSION:

The plain and literal meaning of the language contained in S.C. Code Ann. § 1–11–140 is that political subdivisions of the State, including municipalities, counties and school districts, if they chose to procure tort liability insurance, must obtain such insurance from the Budget & Control Board through the Division of General Services exclusively, and from no other source.

***3** Nathan Kaminski, Jr.
Assistant Attorney General

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