

1978 WL 35219 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 13, 1978

*1 Roy McBee Smith
Suite 411 Montgomery Building
P. O. Box 5306
Spartanburg, SC 29304

Dear Mr. Smith:

You have requested an opinion from this Office concerning Act 182 of the 1977 Acts and Joint Resolutions of South Carolina. This Act provides, among other things, for sovereign immunity as it relates to hospitals and other medical facilities in this state, and you have questioned whether this act bars bringing an action against the individual employee.

I understand that you are of the opinion that the employee, agent, servant, or officer of the hospital can still be sued as an individual if the hospital is not joined or named as a defendant.

With respect to medical facilities' employees other than physicians or dentists, Act 182 states that ' . . . a plaintiff . . . shall only name as a party defendant the entity for which the employee was acting and shall not name the employee individually unless, the entity for which the employee was acting cannot be determined at the time the action is instituted. In the event the employee is individually named under the conditions permitted above, the entity for which, the employee was acting shall be substituted as the party defendant when it can be so reasonably determined.

You have suggested suing an employee individually, not naming the employing entity. However, this act has provided that 'when it can be so reasonably determined,' the entity for which the employee was acting must be substituted as the named defendant. So, unless the name of the employee cannot be reasonably determined, it is the opinion of this Office that Act 182 of the Acts does, in fact, bar bringing an action against the individual employee.

I trust that this answers your question. If not, or if you need further information, please do not hesitate to call.
Very truly yours,

Perry M. Buckner
Assistant Attorney General

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