

1978 S.C. Op. Atty. Gen. 220 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-194, 1978 WL 22662

Office of the Attorney General

State of South Carolina

Opinion No. 78-194

November 16, 1978

***1 SUBJECT: Military Armed forces**

A South Carolina National Guardsman is immune from civil liability for acts done in the line of duty while in the discharge of his military duty.

TO: George R. Wise
COL, GS SCARNG

QUESTION:

Whether [Section 25–1–2170, Code of Laws of South Carolina \(1976\)](#) gives immunity from civil liability for acts done by an officer or enlisted man in the South Carolina National Guard while performing community relations/domestic action programs.

AUTHORITIES:

[Section 25–1–2170, Code of Laws of South Carolina \(1976\);](#)

National Guard Bureau Pamphlet No. 360–5, paragraph 4–3(b)(3), May 15, 1978.

DISCUSSION:

[Section 25–1–2170](#) provides immunity from civil liability for officers and enlisted men in the South Carolina National Guard for any act done ‘in the discharge of his military duty when such act is in the line of duty.’ (Emphasis Added) This code section thus requires not only ‘duty’ status but also an act in the ‘line of duty’ before such immunity will attach. NGB Pam. 360–5 in paragraph 4–3(b) provides that the duty status of guardsmen while participating in community relations/domestic action programs depends upon certain conditions being met. Subsections (1) and (2) provide for duty status while participation that does not fall within (1) or (2) is considered non-duty status. These provisions address only the first requirement of [Section 25–1–2170](#), however, that being the ‘discharge of his military duty.’ It would seem apparent that a guardsman falling within 4–3(b)(3) would not be immune from civil liability. It is also apparent that although a guardsman participates in the program in a ‘duty status’ under 4–3(b)(1) or (2), he might still perform an act outside of his ‘line of duty’ and therefore also lose the immunity granted by [Section 25–1–2170](#).

CONCLUSION:

It is therefore the opinion of this Office that in order for a South Carolina National Guardsman to claim immunity from civil liability for acts done while performing community relations/domestic action programs under [Section 25–1–2170](#), he must not only be in ‘duty’ status, but the act performed must have been one ‘in the line of duty.’

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