

1975 S.C. Op. Atty. Gen. 19 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3937, 1975 WL 22235

Office of the Attorney General

State of South Carolina

Opinion No. 3937

January 17, 1975

\*1 Paul M. Macmillan, Jr.

Chairman

The South Carolina Industrial Commission

1026 Sumter Street

Columbia S. C. 29201

Dear Commissioner Macmillan:

This letter is in answer to your request for an opinion on approval of applications for self-insurers and of the medical fee schedule and on implementation of the newly enacted provisions relating to major medical benefits for school bus passengers.

The South Carolina Supreme Court in [Dunbar v. Font](#) 170 S. E. 460, 170 S. C. 414 (1933) distinguished between ‘judicial’ and ‘ministerial’ (administrative) functions; judicial acts involve judgment, discretion, or opinion; ministerial merely involves the execution of set tasks prescribed by law (or by rules and regulations having the effect of law). (Parenthetical comments my own.) In my opinion both approval of applications of self-insurers and approval of the medical fee schedule are judicial functions and duties of the Judicial Department of the Industrial Commission. The Administrative Department of Industrial Commission under Section 72–50.7(c) is empowered to ‘conduct all administrative operations of the commission to the end that the judicial department shall be relieved of those responsibilities except where necessary in the performance of its judicial function . . .’ (Emphasis my own.)

Pursuant to Section 72–402 the Commission rules on the adequacy of covered employers' ability to pay as a self-insurers. This approval is clearly a judicial function since it involves discretion, opinion, and judgment. Rule 5 of the Industrial Commission does not establish any guidelines or conditions which would result in automatic approval; and, therefore, the Judicial Department must continue to rule on or approve such applications until such time as it may establish guidelines or conditions which would make any such approval ministerial or administrative in nature.

As for approval of physician fees, the Industrial Commission has already established a fee schedule pursuant to Section 72–19 under which approval of individual fees of physicians is automatic for specified services. (See Resolution adopted November 20, 1950 and last amended March 31, 1970.) Any future revision or amendment of this fee schedule would be the duty of the Judicial Department. Any approval of individual fees pursuant to said schedule would be ministerial and thus a function for the Administrative Department, since it merely finds stated facts or conditions (Services) exist. (See 50 C.J.S., Judicial).

1974 Act No. 1136, Section 9 of the Permanent Provisions creates a fund administered by the Industrial Commission for major medical benefits to school bus passengers in excess of those benefits provided in Section 21–840(1)(a). (Funding is established in 1974 Act No. 1136, Section 67, Item VI of Operation of State Government.)

At your request I propose the following regulations to carry out the above provisions:

\*2 37. Any person claiming benefits under 1974 Act No. 1136, Section 9 (Permanent Provisions), shall submit an affidavit that he has exhausted the medical benefits provided by Section 21–240(1)(a). Fees of physicians and hospital

charges are subject to approval of the Commission and shall not exceed those established in the fee schedule for services under the Workmen's Compensation Laws.

Note: the Commission may wish to establish a schedule for hospital charges to avoid the need for approval by the Judicial Department or delete such approval requirement from the proposed regulation. (In any event this still raises a question of a schedule for hospital charges pursuant to approval required by Section 72-19).

Please contact me if I can provide any further assistance.

Sincerely,

Hardwick Stuart, Jr.  
Assistant Attorney General

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