

1975 WL 29552 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 3, 1975

\*1 Mr. Jay D. Rickman  
CD Coordinator  
Disaster Preparedness Agency  
Rutledge Building  
1429 Senate Street  
Columbia, SC 29201

Dear Mr. Rickman:

Thank you for your inquiry concerning certain sections contained within 'model' legislation for counties to implement a civil defense or disaster preparedness plan or program. As I understand it the State Disaster Preparedness Agency, in an effort to encourage and assist local governments in formulating their own plans, has developed a 'model' for consideration by the entities involved. In the course of this activity certain questions have surfaced requiring clarification.

The sample legislation which would be enacted by the governing bodies concerned contains two sections to which questions pertain as follows:

'Section 2. As used in this resolution the term:

...

(d.) 'Volunteer' shall mean contributing service, equipment or facilities to the disaster preparedness organizations without remuneration or without formal agreement or contract of hire. While engaged in such services, they shall have the same immunities as persons and employees of the County performing similar duties.' (Emphasis supplied)

Section 10.

...

(b.) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the county the right to inspect, designate and use the whole or any part or parts of such real estate or premises for the purposes of sheltering persons during an actual, impending or threatened enemy attack, or during an authorized civil emergency practice exercise, shall not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege, or other permission, or for loss of, damage to, the property of such person.

With regard to Section 2 you ask whether the immunity referred to is provided by state statute and whether the same is contingent upon the declaration of a disaster by the Governor. Reflecting that county employees may have some measure of protection through insurance and workman's compensation, you also inquire as to the source of protection for volunteers.

Section 4 provides that the county disaster preparedness agency shall include '[a]ll county and city officials and employees of the county, together with those volunteer forces enrolled to aid them during a disaster . . . .' Sections 6(b)(5) and 8

assign to the Coordinator duties relating to the recruitment and training of volunteer personnel and agencies to augment county personnel for disaster preparedness purposes.

In answer to your question be advised that no state statute exists providing immunity to public officers or employees for the consequences of their acts. That public officers and employees may be sued both criminally and civilly is implicit under the provisions of § 1-234 of the South Carolina Code. Nevertheless, there has developed from the common law and case decisions limitations as to the personal liability of public officers and employees. These limitations vary from jurisdiction to jurisdiction and with the circumstances of each case. Absent statutory provisions for immunity there is no clearly defined and easily recited rule. Consideration may be given to numerous factors including whether the acts were within or in excess of the scope of authority, discretionary or ministerial, done in good faith or with malice, of omission or commission and involving contracts or torts. See 62 Am Jur 2d, 'Public Officers and Employees' §§ 278-304; 67 CJS, 'Officers', §§ 125-132.

\*2 Suffice is to say that volunteers engaged in services would have the same immunities as county employees would have if they were engaged in similar services. There is, of course, limited immunity incorporated in the 'model' itself. Section 10(a) provides in part

' . . . and the county or agents and representatives of the county, or any individual, . . . in good faith carrying out, complying with, or attempting to comply with any order, rule, or regulation promulgated pursuant to the provisions of this resolution shall not be liable for any damage sustained to persons or property as a result of such activity.' (Emphasis supplied)

The provisions of the above section would cover volunteers under the circumstances specified and the protection afforded would not be contingent upon the declaration of a disaster by the Governor. With regard to other measures of protection which might be available to regular employees of the county, city, etc. such as insurance and workmen's compensation, the same would probably not extend to volunteers. The extent of any coverage would be governed by the terms of the insurance policy involved or the provisions of the legislation authorizing such benefits. See § 72-11, Code of Laws of South Carolina (1962), as amended defining 'employee' for purposes of the Workmen's Compensation Law and § 72-107 excepting 'casual' employees' from coverage under the law. Absent coverage or inclusion specifically provided for, volunteers would be left to their own resources in insuring adequate risk protection.

With regard to Section 10(b), quoted above, you have again inquired whether such immunity is provided for by state statute and whether such is contingent upon the declaration of a disaster by the Governor. As indicated above no state statute provides for this and by the language of the subsection itself, a declaration by the Governor would be unnecessary. Section 10(b) as proposed simply grants immunity from civil liability to persons allowing their property to be used as shelters 'during an actual, impending, or threatened enemy attack, or during an authorized civil emergency practice exercise.' Citizens and others who enter such shelter areas do so at their own risk.

Finally you ask whether the 'model' resolution must be backed by a state law to be effective. Under Section 44-317 of the South Carolina Code relating to State Civil Defense and Disaster Control, county and municipal governments are expressly made responsible for 'organizing, planning and otherwise preparing' for possible disasters. The enactment of the 'model' resolution or similar legislation in meeting this responsibility would be valid and effective without further action by the General Assembly. In fact the General Assembly can no longer properly pass local legislation in light of the 'home rule' provisions of the South Carolina Constitution which became effective upon ratification by the General Assembly on March 7, 1973. See S. C. Const., Art1 VIII.

\*3 I hope the foregoing has sufficiently provided the information and guidance requested, but if further assistance is needed, do not hesitate to call upon me.

Yours very truly,

John P. Wilson  
Senior Assistant Attorney General

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