

1975 S.C. Op. Atty. Gen. 227 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4164, 1975 WL 22459

Office of the Attorney General

State of South Carolina

Opinion No. 4164

October 27, 1975

**\*1** Ambulance operators employed by a private operator pursuant to an agreement with a county, which provides the equipment and billing services, are not employees of the county, for purposes of workmen's compensation.

TO: Mr. John W. Scott  
Director  
State Fund

Question:

Does an agreement between a private operator to operate and staff ambulances and a county to furnish equipment, billing and to exercise some control over the management by the operator make the employees of the operator statutory employees of the county for workmen's compensation purposes?

Authorities:

Section 72–11, Code of Laws of South Carolina, defines ‘employee’ of political subdivisions of the State as ‘all officers and employees thereof . . .’

Section 72–102, supra, makes workmen's compensation coverage mandatory for all public employees.

Section 72–111, supra, provides: ‘When any person . . . undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person . . . for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by the owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.’

The purpose of Section 72–111, supra, is to protect employees from irresponsible contractors who do not provide workmen's compensation coverage and to prevent employers from escaping liability by doing through independent contractors what they would otherwise do through their own employees. See [Adams v. Davidson-Paxon Co.](#), 230 S.C. 532, 96 S.E.2d 566 (1957).

Where a statute specifically defines who shall be considered an employee of the State and its political subdivision and where statutes relating to employees of subcontractors do not specifically refer to the State and its subdivision, a claimant who is not in fact a public employee cannot recover compensation from the State or subdivisions. [City of Portsmouth v. Daniels](#), 162 S.E. 324, 157 Va. 614 (1932). Terms such as ‘person,’ ‘owner,’ ‘trade,’ ‘business,’ and ‘occupation’ do not apply to political entities. [Supervisors of Amhurst County v. Boaz](#), 176 Va. 126, 10 S.E.2d 498 (1940); [City of Portsmouth v. Daniels](#), supra.

‘Employees’ of the State or its subdivisions thereof within the Compensation Act ‘are generally of the class which derives its compensation for services directly from public funds dispensed from the public treasury. This must be stated as the

general rule. Any other would tend toward confusion and lack of uniformity.' [Industrial Commission of Ohio v. Shaner](#), 127 Ohio St. 366, 188 N.E. 559 (1933).

Normally any doubt is resolved in favor of compensation coverage under a liberal construction of the Workmen's Compensation Act. [Bailey v. Santee River Hardwood Co.](#), 205 S.C. 433, 32 S.E.2d 365 (1944). However, when dealing with the State and its subdivisions, any ambiguity must be resolved in favor of the State and its subdivisions. [Brazell v. City of Camden](#), 121 S.E.2d 221, 238 S.C. 580 (1961).

Discussion:

\*2 Emergency Medical Technicians employed by a private ambulance company, which had contracted with a county to staff and manage an ambulance service, are not actual employees of the county. Since they are not public employees, the only way they could be covered would be if they are statutory employees of the county pursuant to § 72–111, *supra*.

While there is no case law in South Carolina specifically construing this section in regard to the State and its political subdivisions, case law in Virginia interpreting similar provisions holds that such is not applicable to the State and its subdivisions. This strict construction is consistent with South Carolina cases requiring strict construction of statutes in favor of political entities on the basis of sovereign immunity. Furthermore, since the legislature has clearly set up two classes of employers—(1) State and all political subdivisions and (2) all private employment—and made coverage mandatory for all public employees, it is reasonable to limit the application of § 72–111, *supra*, to private employers, despite the liberal construction normally given to the Workmen's Compensation Act.

Conclusion:

Despite the control, equipment and services provided by a county to a private operator of an ambulance service, employees of the private operator are not public employees or statutory employees of the county for purposes of workmen's compensation coverage.

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