

1975 S.C. Op. Atty. Gen. 231 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4174, 1975 WL 22469

Office of the Attorney General

State of South Carolina

Opinion No. 4174

November 6, 1975

***1** Employees on a dairy farm producing raw milk for sale to a commercial dairy are within the agricultural exemption to coverage under the Workmen's Compensation Act.

TO: Duane A. Earles
Compliance Officer
S. C. Industrial Commission

Question:

Are dairy farm employees to be included within the mandatory coverage provisions of the Workmen's Compensation Act where said farms merely produce raw milk for sale to a processor?

Authorities:

Sections 72–107 and 72–108 of the South Carolina Code; [Flemon v. Dickert-Keowee, Inc.](#), 259 S.C. 99, 190 S.E.2d 751; [Hinson v. Creech](#), 286 N.C. 156, 209 S.E.2d 471; [Larson's Workmen's Compensation Law](#), § 53.30, 53.32, 53.33, and 53.34. 3 [Words and Phrases](#), Agricultural Employees, Agricultural Labor and Agricultural Laborers.

Discussion:

Chapter 3 of Title 72 of the S. C. Code of Laws details various exemptions to coverage under the S. C. Workmen's Compensation Act. Section 72–107 in part provides that:

This title shall not apply to:

...

(5) Agricultural employees; unless the agricultural employer voluntarily elects to be bound by this Title, as provided by § 72–109.

This provision of the statute, enacted in 1974, superceded an earlier provision in the same section which exempted 'farm laborers' from coverage under the act. To the extent that the words agricultural and employee are more comprehensive in scope than the words farm and laborer, one may infer that in amending this section, the Legislature intended to provide a more comprehensive exemption from the statute. See 3 [Words and Phrases](#), Agricultural Employees, Agricultural Labor and Agricultural Laborers.

Although there are no S. C. decisions construing the extent of the above exemption, it may be observed that in construing a similar statute, the Supreme Court of North Carolina noted: 'Only when a farmer departs from his agricultural pursuits and clearly enters into a service business or another business remote from the direct production of agricultural products do his services cease to be agricultural within the meaning of the statute exempting agriculture from the provisions of the

Workmen's Compensation Act.' [Hinson v. Creech](#), 286 N.C. 156, 209 S.E.2d 471. While the decision of the N. C. Court is not controlling, it is entitled to great respect, since the South Carolina Workmen's Act was patterned upon legislation previously enacted in that state. [Flemon v. Dickert-Keowee, Inc.](#), 259 S.C. 99, 190 S.E.2d 751.

The proposition that the operation of a dairy farm is excluded from coverage under the Workmen's Compensation Act receives ample support for general authority. Admittedly there is a problem with regard to the classification of activities on the borderline between old fashioned farming and commercial processing related to agricultural commodities. [Larson's Workmen's Compensation Law](#), § 53.30. However, the dairy farm involved in the present instance may be readily distinguished from instances in which coverage has been advocated for those involved in agricultural pursuits. Here, the raw milk ostensibly remains the property of the producer until picked up by the processor. At the time the producer is in possession of the milk, it has undergone no processing. See generally [Larsons](#) § 53.30 and § 53.32. Obviously, if a farmer does not more than sell the products of his own farm, he is still engaged in farming activities. [Larson's](#), § 53.33 and Section 72–108, *supra*.

*2 It should be additionally noted that § 72–108 of the South Carolina Code exempts from coverage under the Workmen's Compensation Act persons selling agricultural products for the producers thereof in consideration of compensation paid by the producers. To require coverage under the act merely by virtue of the fact that a farmer sells his produce to another, while exempting from the operation of the act persons who sell the produce for him would clearly seem foreign to the intent and purpose of the specifically enacted exemptions to the act.

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