

1974 WL 27463 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 4, 1974

***1 RE: Charleston County Emergency Medical Service**

Ben Scott Whaley, Esq.
Barnwell, Whaley, Stevenson & Patterson
120 Meeting Street
Charleston, S. C. 29402

Dear Mr. Whaley:

By letter of August 20, 1974, you inquire as to the status of the efforts being made by the South Carolina Department of Health and Environmental Control (HEC) to implement the provisions of The Emergency Medical Services Act of South Carolina, Act No. 1118, 1974 S. C. Acts and Joint Resolutions, which took effect when ratified by the Governor on July 2, 1974.

Under this new law the Department of HEC has been assigned all administrative responsibility for the South Carolina emergency medical service (EMS) program, including the following important duties:

- a) Issuing 'licenses' to persons, firms, corporations and governmental divisions and agencies in order that they may lawfully provide EMS in South Carolina. Sections 3(f) and 4(a), 1974 Act No. 1118.
- b) Issuing 'certificates' to emergency medical technicians (EMT's) who have completed specific training programs developed and approved by the Department of HEC. Sections 2(d), 3(h & k), 8, 1974 Act No. 1118.
- c) Issuing 'permits' approving ambulance vehicles to be employed in EMS programs. Sections 3(e), 4, 5, 6, 1974 Act No. 1118.

The office within the Department of HEC which has primary responsibility for implementing the Emergency Medical Services Act is the Division of Emergency Medical Services which is under the general supervision of Dr. Lamar E. Priester, Deputy Commissioner for Environmental Health. I have recently had an opportunity to discuss the status of the EMS program with both Dr. Priester and With Randolph (Randy) R. Mahan, the Assistant Attorney General assigned to the Department of HEC. It is my understanding that rules and regulations are now being drafted by the Department of HEC which will establish the administrative machinery necessary to comply with the directives of 1974 Act No. 1118. However, none of the new regulations have yet been formally approved or filed.

The situation presented by the passage of 1974 Act No. 1118 is at best awkward, inasmuch as no time delay has been provided between ratification of the law and the date it went into effect to allow for prior establishment of the administrative machinery the law demands. It is my understanding that Charleston County has been given, by letter, permission to provide EMS in Charleston County. However, it also appears that no EMT certificates or ambulance permits have been issued under the authority of the new Act and the Department of HEC has expressed also some reservations regarding the competition aspect of the Charleston County EMS program as it now exists. Because of these facts, Charleston County is operating its EMS program in violation of the Act, but apparently without the ability to comply with the Act.

The exposure of the County to a civil law suit under these circumstances is certainly a possibility and this office is unaware of any controlling law on the point. However, I would note that, as you know, a successful suit in tort must embody actionable negligence based on existing circumstances. Criminal prosecution under the 1974 Act No. 1118 would not seem to be a threat at this time due to the incomplete status of necessary EMS rules and regulations.

*2 If I may be of further assistance, please correspond.

Very truly yours,

John B. Grimball
Assistant Attorney General

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