

1973 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3450, 1973 WL 20915

Office of the Attorney General

State of South Carolina

Opinion No. 3450

January 12, 1973

***1 Re: Recuest for Confirmation of Position 195—Military**

Colonel James E. Mathews
Staff Judge Advocate
USAF
Department of the Air Force
Headquarters Ninth Air Force (TAC)
Shaw Air Force Base, South Carolina 29152

Dear Colonel Mathews:

In reply to your letter of January 11, 1973, please be advised that it is the opinion of this office that the South Carolina Air National Guard would not be liable for any damages resulting from a collision or crash of its aircraft. The South Carolina in National Guard is an agency of the State of South Carolina and as such enjoys sovereign immunity from suit. Absent express waiver by the General Assembly of South Carolina, the South Carolina Air National Guard cannot be sued. See [Brazell v. City of Camden](#), 238 S.C. 580, 121 S.E.2d 221 (1961). As of this date, the only waiver of sovereign immunity that would be applicable to the South Carolina Air National Guard is contained in Section 10–2621, et seq., of the Code of Laws of South Carolina. This particular statute is entitled ‘The South Carolina Governmental Motor Vehicle Tort Claims Act’ and allows private individuals to sue when they have been injured or otherwise damaged by the negligent operation of a motor vehicle which is being operated by an employee of a governmental entity.

The statute set forth above would not, however, apply to the operation of aircraft and thus there is no present liability on the part of the South Carolina Air National Guard and the Air National Guard would not and could not waive its sovereign immunity in this regard. I hope this sufficiently answers the question which you posed. If we can be of any further assistance in this matter, please do not hesitate to call upon us.

Sincerely,

Ellison D. Smith, IV
Assistant Attorney General

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