

1973 WL 26687 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1973

***1 Re: Doctrine of Sovereign Immunity**

Robert E. Wood
Director
Division of Education
Educational Television Network
2712 Millwood Avenue
Columbia, S. C. 29205

Dear Mr. Wood:

You have requested that this office advise you generally as to the State's immunity from suit.

It appears to be clear that in the absence of expressed statutory authorization, suit in tort will not lie against the State under the Doctrine of Sovereign Immunity. [Mullinax v. Hambright](#) 115 S.C. 22, 104 S.E. 309; [Jones v. Jones](#) 243 S.C. 600, 135 S.E. 2nd 233. The question of immunity of the State from suit in contract is however much less clear. The general law as appears in 81 C.J.S. States Sec. 113 is to the effect that a state is bound by contracts executed in its behalf by its duly authorized officers or agents. The South Carolina case of [Sherbert v. School District No. 85 Spartanburg County](#), 169 S.C. 191, 116 S.E. 391, stated 'while it is true that political subdivisions of the State may be sued on their contracts without statutory provision . . .' This case lends some credence to the theory that the State may be sued in contract absent any statutory authorization. It is furthermore a series of cases in the State which hold that the State is bound on contracts entered into on its behalf through the Doctrine of Promisory Estoppel. [Powell v. Board of Commissioners of Police Insurance and Annuity Fund of State](#), 210 S.C. 136, 41 S.E. 2nd 780.

The issue of the State's liability in quasi contractual actions such as copyright infringement or similar actions has as yet been undecided.

This office would advise that any questionable contract should be submitted to this office for review prior to entering therein on behalf of the State in order that the State's liability under such contract might be construed and that the interest of the State might be protected therein.

I trust that this has been sufficient in answer to the question that you posed. If we may be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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