

1973 WL 27742 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 27, 1973

*1 Mr. Carroll D. Padgett, Jr.
Attorney at Law
P. O. Box 797
Loris, South Carolina 29569

Dear Mr. Padgett:

I regret that I have not heretofore answered your letter of December 6, inquiring as to the tort liability of the South Carolina Air National Guard which may arise in connection with the collision of an aircraft operated by it while on maneuvers.

There is no question out that the Air Guard is immune from suit for tort. Section 10-2621, known as the 'Motor Vehicle Tort Claims Act,' is in my opinion not applicable in that I do not believe that an airplane is a motor vehicle within the meaning of this Act. I am certain that if suit is brought, this defense would be interposed by this Office.

With respect to the procedure to seek permission to bring suit in these circumstances against the Air Guard, I point out the case cited below in which permission was granted for individuals to sue the State in tort and which held that such a statute was unconstitutional as special legislation. I doubt that this avenue is available.

In short, unless the Motor Vehicle Liability Act can be construed to include aircraft, you probably are faced with a wrong without a remedy. This occurs not infrequently and unfortunately even in case of recovery under that statute the Air Guard probably does not have funds to pay a judgment. However, I have no doubt that if judgment is recovered the monies would eventually be furnished by the Legislature.

With apologies for my delayed answer, and with best regards.

Cordially,

Daniel R. McLeod
Attorney General

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