



HENRY McMASTER  
ATTORNEY GENERAL

August 25, 2010

Mr. Thomas A. Trimboli  
Senior Vice President for Legal Affairs  
College of Charleston  
66 George Street  
Charleston, South Carolina 29424-0001

Dear Mr. Trimboli:

In a letter to this office you requested an opinion as to the coverages that may be available pursuant to S.C. Code Ann. §§ 42-7-10 et seq., the State Accident Fund, to College of Charleston (hereinafter "College") EMS student volunteers who are injured while performing services for the College's Emergency Medical Services (hereinafter "EMS"). You referenced as follows:

The College of Charleston EMS was started in 1995 and is staffed entirely with College of Charleston volunteers. These volunteers are under the general direction of a College employee, the Director of Fire and EMS. No academic credit is earned by our students as a result of such service, nor is service with the EMS a component of any course of academic instruction offered by the College. Student volunteers either receive EMT-Basic training before volunteering their service to the College's EMS (provided by the College or another source), or come to the EMS having previously secured the requisite qualifications for service.

Although the primary area of concentration for the College's EMS is the College campus, on occasion the College EMS may lend assistance at an off campus location at the request of the City or County EMS. The College EMS, however, is not under the management, control or legislative jurisdiction of the City or County of Charleston and (except for occasional donations) is not funded in whole or in part by any entity other than the College of Charleston.

If a student EMS volunteer responding to a call is physically injured during the call, the College requests your opinion and guidance as to whether coverage would be available under the State Accident Fund.

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The State Accident Fund is established and provisions regarding its coverage are set forth pursuant to S.C. Code Ann. §§ 42-7-10 et seq. As referenced by you, it appears that certain political subdivisions and their agencies and institutions may elect to participate in the State Accident Fund upon payment of an annual charge. Section 42-7-50 states that

[a]ny county or municipality in the State or any agency or institution thereof shall have the option of participating under the provisions of this article but no county, municipality, agency or institution thereof shall be covered by the workers' compensation insurance provided in this article until payment of the annual charge provided in this Title shall have been made to the fund, nor shall any county, municipality, agency or institution thereof be covered by this insurance after the lapse of the period for which the annual charge has been paid. The director shall notify each county, municipality, agency or institution thereof at least thirty days before the expiration date of its coverage in order that the county, municipality, agency, or institution may keep its insurance in force continuously. (emphasis added).

This office is in agreement with your conclusion that the use of the word "thereof" in such statute indicates that the statute refers solely to South Carolina counties and municipalities and not to State institutions or agencies, such as the College.

Reference may also be had to the provisions of Section 42-7-60 which state that:

[n]otwithstanding anything to the contrary contained in § 42-1-130, the provisions of this article apply to all officers and employees of the State and of any county, municipality, or other political subdivision thereof or any agency or institution of the State which has elected to participate under this article under the provisions of § 42-7-50.

In cases of officers or employees who are on a partial or total fee basis or whose official duties require only part time the director may fix, for the purpose of this article, the average weekly wage of this officer or employee, not in excess of forty dollars and collect charges from the employer of this officer or employee on the basis of the average weekly wage so fixed.

Any client of the state agency of Vocational Rehabilitation, while involved in a program of assessment or work adjustment as defined in this section, who suffers an injury for which compensation is specifically prescribed in this title, may be awarded and paid compensation under the provisions of this title. For purposes of this section, "a client involved in a program of assessment or work adjustment" is defined as any client performing work tasks which are part of the program of Vocational

Rehabilitation services for the individual and who in turn receives wage payments from the agency for the work performed.

Students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, distributive education, or apprentice programs on the premises of private companies are also covered by the provisions of this title. (emphasis added).

As stated by you, certain types of volunteers may also be covered by the State Accident Fund. Section 42-7-65 as last amended by Act No. 219 of 2010 provides that:

[n]otwithstanding the provisions of Section 42-1-40, for the purpose of this title and while serving in this capacity, the total average weekly wage of the following categories of employees is the following:

(1) for all members of the State and National Guard, regardless of rank, seventy-five percent of the average weekly wage in the State for the preceding fiscal year, or the average weekly wage the service member would be entitled to, if any, if injured while performing his civilian employment, if the average weekly wage in his civilian employment is greater;

(2) for all voluntary firemen of organized voluntary rural fire units and voluntary municipal firemen, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(3) for all members of organized volunteer rescue squads, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(4) for all volunteer deputy sheriffs, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year; and

(5) for all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year.

The wages provided in items (2), (3), (4), and (5) of this section may not be increased as a basis for any computation of benefits because of employment other than as a volunteer. Persons in the categories provided by items (2), (3), (4), and (5) must be notified of the limitation on average weekly wages prescribed in this section by the authority responsible for obtaining coverage under this title.

'Volunteer firemen' and 'rescue squad members' mean members of organized units whose membership is certified to the municipal clerk or chairman of the council of the municipality or county in which their unit is based by the chief officer of the unit concerned. A 'volunteer deputy sheriff is a volunteer whose membership is certified by the sheriff to the governing body of the county. No volunteer deputy sheriff may be included under the provisions of this title unless approved by the governing body of the county or municipality. A voluntary constable appointed pursuant to Section 23-1-60 must be included under the provisions of this title only while performing duties in connection with his appointment and as authorized by the State Law Enforcement Division. The workers' compensation premiums for these constables must be paid from the state general fund upon warrant of the Chief of the State Law Enforcement Division. Notwithstanding any other provision of law, voluntary firemen of organized volunteer fire units and members of organized volunteer rescue squads are covered under this title by the county governing body unless the governing body of the county opts out of the coverage.

The average weekly wage for inmates of the State Department of Corrections as defined in Section 42-1-480 is forty dollars a week. However, the average weekly wage for an inmate who works in a federally approved Prison Industries Enhancement Certification Program must be based upon the inmate's actual net earnings after any statutory reductions. The average weekly wage for county and municipal prisoners is forty dollars a week. The average weekly wage for students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, marketing education, or apprentice programs on the premises of private companies or while engaged in the Tech Prep or other structured school-to-work programs on the premises of a sponsoring employer is fifty percent of the average weekly wage in the State for the preceding fiscal year." (emphasis added).

Therefore, individuals, such as certain volunteer firemen, volunteer members of organized rescue squads, volunteer deputy sheriffs, and volunteer state constables, may be covered by the Fund. As referenced, "volunteer firemen" and "volunteer rescue squad members" are specifically defined by such statute. However, such classifications would not appear to include EMS student volunteers. As a result, in the opinion of this office, EMS student volunteers would not be considered an included within the category of "members of organized volunteer rescue squads" for purposes of Section 42-7-65(5) and, as a result, would not be considered eligible for coverage by the State Accident Fund under such classification. As set forth, while certain "students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, marketing education, or apprentice programs on the premises of private companies or while engaged in the Tech Prep or other structured school-to-work programs on the premises of a sponsoring employer" are included, such description would not appear to be applicable to the EMS student volunteers at the College.

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Therefore, upon construing the applicable statutory provisions, I am unaware of any basis by which the EMS student volunteers at the College would be covered by the State Accident Fund. However, as indicated in our telephone conversation, I contacted Mr. Herman Lightsey with the Fund and he indicated that there may be a method by which these individuals may be covered. I suggest that you contact him if you would like to proceed under such possible coverage.

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General