

7129 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 28, 2001

Chris K. Cothran, MHS
Executive Director
SC Midlands Emergency Medical
Service Management Association
3201 Leaphart Road
West Columbia, South Carolina 29169

RE: Informal Opinion

Dear Mr. Cothran:

By your letter of March 20, 2001, you have requested an opinion of this Office concerning the eligibility of employees of the S.C. Midlands EMS Management Association (Midlands EMS) for participation in the state health and dental insurance plan. By way of background you write:

The SC Midlands EMS Management Association was organized February 14, 1977 as an association of counties "to develop, plan and promote health and health-related services including an emergency medical services system via the implementation and administration of grants involving appropriate federal and state funds pertaining or pertinent to emergency medical services within the Region." With previous opinion rendered concerning the status of Midlands EMS as a "political subdivision" of these counties ... we feel that the three full-time employees of this office would be eligible under subsection (A)1 "counties;"...

The Budget and Control Board has informed you that Midlands EMS is ineligible, and you ask for our review of the applicable statute.

At the outset, this Office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of the statute in question. See OPS. ATTY. GEN. Mar. 9, 2000; Nov. 25, 1998. As we have emphasized in earlier opinions "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." OP. ATTY. GEN. Oct. 20, 1997 (quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986)). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court would have adopted in the first instance. See OP. ATTY. GEN. Mar. 12, 1997.

The controlling provision is found in Chapter 11 of Title 1 of the South Carolina Code of Laws, which contains the provisions governing the State Budget and Control Board. The relevant

Relevant Letter

provision, Section 1-11-720, lists the additional entities eligible for coverage by the state health and dental plan. Indeed, Section 1-11-710(B) mandates that all the additional entities enumerated in 1-11-710(A) further comply with requirements established by the State Budget and Control Board. Given that the State Budget and Control Board is charged in these statutes with their enforcement and administration, the Budget and Control Board's interpretation of Section 1-11-720 must only be reasonable for the courts to uphold it.

Currently, Section 1-11-710(A) lists twenty-four governmental entities, in addition to the state, whose employees are eligible for the plan:

- (1) counties;
- (2) regional tourism promotion commissions funded by the Department of Parks, Recreation and Tourism;
- (3) county mental retardation boards funded by the State Mental Retardation Department;
- (4) regional councils of government established pursuant to Article 1, Chapter 7 of Title 6;
- (5) regional transportation authorities established pursuant to Chapter 25 of Title 58;
- (6) alcohol and drug abuse planning agencies designated pursuant to Section 61-12-20;
- (7) special purpose districts created by act of the General Assembly that provide gas, water, fire, sewer, recreation, or hospital service, or any combination of these services;
- (8) municipalities;
- (9) local councils on aging or other governmental agencies providing aging services funded by the Office on Aging, Department of Health and Human Services;
- (10) community action agencies that receive funding from the Community Services Block Grant Program administered by the Governor's Office, Division of Economic Opportunity;
- (11) a residential group care facility providing on-site teaching for residents if the facility's staff are currently members of the South Carolina EP{2} Retirement System established pursuant to Chapter 1, Title 9 and if it provides at no cost educational facilities on its grounds to the school district in which it is located.
- (12) the South Carolina State Employees' Association;
- (13) the Palmetto State Teachers' Association;
- (14) the South Carolina Education Association;
- (15) the South Carolina Association of School Administrators;
- (16) the South Carolina School Boards Association;
- (17) the South Carolina Student Loan Corporation.
- (18) legislative caucus committees as defined in Section 8-13-1300(21).
- (19) soil and water conservation districts established pursuant to Title 48, Chapter 9.
- (20) housing authorities as provided for in Chapter 3, Title 31;
- (21) the Greenville-Spartanburg Airport District;
- (22) cooperative educational service center employees.
- (23) the South Carolina Sheriff's Association.
- (24) the Pee Dee Regional Airport District.

As you can see from this exhaustive list, the General Assembly certainly delineated with specificity the particular entities entitled to coverage. Had the General Assembly also intended to include subdivisions of the counties, assuming Midlands EMS would be considered a subdivision

of the counties, it probably would have indicated this intent in the statute, either by further defining "counties" in subsection (A)(1) or in another provision. For example, in an analogous situation, subsection (A)(4) extends coverage to regional councils of government established pursuant to Section 6-7-10 *et seq.* Regional councils of government are created by agreement of the governing bodies of multiple counties to aid in long term planning for the area. Had the General Assembly intended "counties" in subsection (A)(1) to be read so broadly as to include groups formed to represent county interests in a particular area, subsection (A)(1) would have included regional councils of government and subsection (A)(4) would have been unnecessary. The statute's extension of eligibility in the numerous subsections to other governmental entities supports the Budget and Control Board's limited reading of subsection (A)(1) to apply only to county employees, not association of counties employees.

As you have noted in your correspondence, county EMS associations have been deemed "political subdivisions" in previous opinions of this Office. See OPS. ATTY. GEN. Nov. 20, 1986; Mar. 1, 1977. These conclusions, however, are not inconsistent with the Budget and Control Board's interpretation of Section 1-11-720(A)(1). Section 1-11-720 does not purport to extend coverage to all political subdivisions of the state or local governments; the list of entities eligible is more exclusive. Thus, the State Budget and Control Board's determination that Midlands EMS is ineligible for the state health and dental plan under Section 1-11-720 is neither unreasonable nor contrary to other provisions of law. As such, we are constrained to defer to their interpretation.

As a final note, you may wish to seek redress through the General Assembly. Section 1-11-720 has been amended numerous times to add entities to the growing list of those eligible for coverage. As recently as the year 2000, six entities were added by legislative enactment. A similar enactment for county EMS associations would be the surest method of extending eligibility to Midlands EMS employees.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General