

6834 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

December 9, 1999

Stan M. McKinney, Director  
Emergency Preparedness Division  
Office of the Adjutant General  
1429 Senate Street - Rutledge Building  
Columbia, South Carolina 29201

**Re: Letter of December 1, 1999**

Dear Mr. McKinney:

You have requested an opinion on the following issues with regard to volunteer help during an evacuation:

1. If a homeowner opens his house as a shelter to the evacuating populace, would the homeowner be covered under the United States Public Law 105-19; otherwise known as the Volunteer Protection Act of 1997?
2. If a non-profit organization (i.e., churches) acts as a liaison for evacuees from the coast to a host household, would the host homeowner be covered under the United States Public Law 105-19.

The federal Volunteer Protection Act of 1997 would protect the homeowners in these situations from simple negligence claims when they are acting on behalf of a nonprofit or not for profit organization such as a church or on behalf of the State, a governmental entity. This Act provides as follows:

... no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if -

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by

the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or owner of the vehicle, craft, or vessel to—

- (A) possess an operator's license; or
- (B) maintain insurance.

42 U.S.C.A. § 14503(a). Other qualifiers to the grant of immunity include requirements that the volunteer's conduct must not have constituted either a crime of violence, a hate crime, a sexual offense under state law, a civil rights violation under either federal or state law, or the volunteer must not have been under the influence of alcohol or drugs at the time of the incident. 42 U.S.C.A. §14503(f). Even when it does not provide immunity, the Act may limit the amount of damages someone can recover as it prohibits the awarding of punitive damages against a volunteer unless the victim establishes by clear and convincing evidence that the harm caused by the volunteer amounted to willful or criminal misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed. 42 U.S.C.A. § 14503(e). The Act also limits the damages for "non-economic loss" that may be recovered against the volunteer. 42 U.S.C.A. § 14504.

South Carolina law also offers protection for volunteers acting on behalf of the State government. Under the chapter on "Government Volunteers," Title 8 provides that "[v]olunteers in state service shall enjoy the protection of sovereign immunity of the State to the same extent as employees." S.C. Code Ann. § 8-25-40. Under the Tort Claims Act, "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefore with the exception of conduct outside the scope of official duty or conduct constituting actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(a)-(b).

Therefore, these statutes, both federal and state, should offer protection from liability for simple negligence to the homeowner acting on behalf of the State under either of the scenarios you proposed.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in

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the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Christie Newman Barrett  
Assistant Attorney General

CNB/kkf