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The State of South Carolina



Office of the Attorney General

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July 25, 1990

Ben W. Anderson, Legal Counsel
Clemson University
P. O. Box 992
Clemson, South Carolina 29631

Re: Purchase of Tort Liability Insurance by
Clemson University

Dear Ben:

The Attorney General has asked that I respond to your opinion request concerning the above. You question whether Clemson University is a "political subdivision" for the purposes of the South Carolina Tort Claims Act [South Carolina Code Section 15-78-10, et seq. (1989 Cum. Supp.)]. I believe that the better reading of the Act supports that Clemson is a "state agency."

In construing statutory language, the cardinal rule is to ascertain and give effect to the intention of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In those instances where the legislative design is unmistakable, the courts will seek to interpret the statute in a manner to implement the legislative scheme. Lockwood Greene Engineers, Inc. v. S. C. Tax Comm., 293 S.C. 447, 361 S.E.2d 346 (S.C. App. 1987). Further, a statute should be read as a whole without undue emphasis or weight being given to any particular phrase or section. Adams v. Clarendon School District No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Again, the statute should be examined in its entirety to ascertain the statutory scheme or design. Id.

The legislative scheme created for adjudicating tort claims against governmental entities recognizes two discrete classes of governmental defendants or tortfeasors: (1) the State and (2) political subdivisions of the State. In creating this scheme, the General Assembly did not intend to restructure the traditional dynamics that ordinarily define political subdivisions, but instead

chose to identify and separately categorize those entities traditionally recognized as political subdivisions of the State and provide them autonomy with regard to claims against them. As to those claims against the State of South Carolina and its agencies, the General Assembly recognized the need to have uniformity by providing that these claims shall be managed by the State Budget and Control Board.

"State" is defined for the purposes of the Tort Claims Act as,

the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

Section 15-78-30 (e). Most clearly, Clemson University is a state-supported university and comes within the definition of "State" as used in the Tort Claims Act. I do not believe that the General Assembly intended for Clemson University, or any other State agency, to be defined as both a "state" agency and a "political subdivision" as used in the Tort Claims Act since the administrative and judicial remedies provided by the Act differ markedly depending upon whether the governmental entity is the State or a political subdivision. Again, it appears that the General Assembly had sound policy reasons to create discrete categories of government tort-feasors and this legislative scheme recognizes the autonomy ordinarily enjoyed by traditional political subdivisions. Thus, a reading of the entire Act, as well as a realization of the statutory design, suggests that Clemson University is an agency of the State for tort claims purposes. Of course, this is consistent with the traditional characterization of Clemson.

Moreover, even if we were to isolate the statutory definition of "political subdivision" as used in the Act, a literal reading does not support that Clemson University is a political subdivision. "Political subdivision" is defined to mean

the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of § 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

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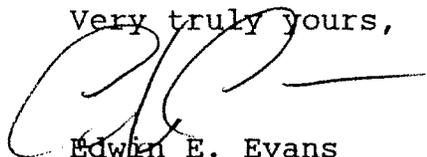
Section 15-78-30 (h). The final phrase amplifies the term "political subdivision" and cannot be reasonably read to modify the term "State" since that term, as used in this paragraph, exists only to further describe special purpose districts. A reading of the statutory language when reduced to its simplest terms provides that a political subdivision means or includes the following:

1. counties;
2. municipalities;
3. school districts;
4. regional transportation authorities established pursuant to Chapter 25 of Title 58;
5. an operator as defined in item (8) of Section 58-25-20;
6. special purpose districts; and
7. any agency, governmental health care facility, department or subdivision of any of the aforementioned political subdivisions.

Each clause is of equal status and no phrase exists as modification or explanation of another. Again, if one were to read the term "thereof" as modifying only the clause immediately preceding, an absurdity would result in that the phrase "any agency, governmental health care facility, department, or subdivision thereof" would apply only to special purpose districts of the State, a result clearly not intended or logical. Cf., State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

For these reasons, I believe that a court would conclude that Clemson University is a State agency rather than a political subdivision as those terms are used in the Tort Claims Act.

Very truly yours,

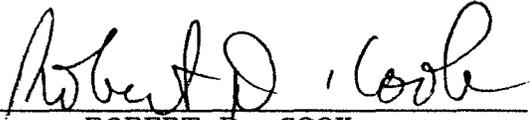


Edwin E. Evans
Chief Deputy Attorney General

EEE/shb

Ben W. Anderson, Legal Counsel
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REVIEWED AND APPROVED:

A handwritten signature in cursive script that reads "Robert D. Cook". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT D. COOK
Executive Assistant for Opinions