

4160 Library

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3680  
FACSIMILE: 803-253-6283

July 31, 1990

E. Ros Huff, Jr., Chief Counsel  
State Workers' Compensation Fund  
P. O. Box 102100  
Columbia, South Carolina 29221-5000

Dear Mr. Huff:

I am writing in response to your question concerning the apparent conflict between the provisions in S.C. Code Ann. §§ 16-3-1250 and 38-77-160. The Compensation for Victims of Crimes Act provides that a payment to a victim from the Compensation Fund entitles the state to a subrogation claim, up to the amount of the award, to any proceeds received by the victim from other sources as a result of injuries from the crimes. The uninsured/underinsured motorist provisions at S.C. Code Ann. § 38-77-160 state that "[b]enefits paid pursuant to this section are not subject to subrogation and assignment."

A situation may arise where a drunk driver injures the driver of another vehicle and the innocent driver carries uninsured or underinsured motorist protection. The Compensation for Victims of Crimes Fund may issue an award to the innocent driver. Your question is, if the innocent driver subsequently receives a settlement from his or her uninsured/underinsured motorist coverage, does the Compensation for Victims of Crimes Fund have a claim against these proceeds.

As a general doctrine of statutory construction, "[t]he government ... and its agencies are not ordinarily considered as within the purview of a statute, however general and comprehensive the language of the act may be, unless intention to include them is clearly manifest, as where they are expressly named or included by necessary implication." Further, "[t]he general doctrine applies or applies with special force, to statutes by which ... rights, or interests of the government would be divested or diminished" 82 CJS 555, Statutes § 317. Our State Supreme Court followed this general tenet by stating "It is the general rule, to which we

E. Ros Huff, Jr.  
July 31, 1990  
Page 2

subscribe, that neither the State nor any of its political subdivisions, is bound by general words in a statute restrictive of a prerogative right, title or interest, unless expressly named." Brooks v. One Motor Bus, Etc., 190 S.C. 379, 3 S.E.2d 42 (1939), overruled on other grounds, 285 S.C. 243, 329 S.E.2d 741 at 744 (1985).

The provisions of the Compensation for Victims of Crime Act expressly set forth at S.C. Code Ann. § 16-3-1250 that "[p]ayment of an award pursuant to this article shall subrogate the State ...." To apply the nonsubrogation, nonassignability provisions of S.C. Code Ann. §38-77-160 would divest the State of its right to assert a claim for reimbursement of amounts previously paid. Since the State is not expressly mentioned in the nonsubrogation, nonassignability provisions, these provisions should not apply to divest the State of its right to reimbursement.

I hope this has been helpful. If I can be of further assistance, please do not hesitate to contact me.

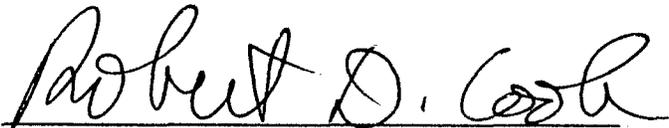
Sincerely,



James P. Hudson  
Deputy Attorney General

JPH:bjt

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions

  
Edwin E. Evans  
Chief Deputy Attorney General