

# The State of South Carolina



## Office of the Attorney General

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March 26, 1986

Melvin B. McKeown, Esquire  
York County Attorney  
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Dear Mr. McKeown:

You have raised several questions concerning the status of personnel employed by a solicitor's office to administer the Victim/Witness Program: whether the persons are county employees, to what fringe benefits these persons may be entitled, who pays for the benefits, and so forth. Following a discussion of the law applicable to these persons, each of your questions will be addressed.

The Victim's and Witness's Bill of Rights, now codified as Section 16-3-1510 et seq., Code of Laws of South Carolina (1976, as amended), was enacted by the legislature in 1984. See Act No. 418, 1984 Acts and Joint Resolutions. Each circuit solicitor has employed persons to perform certain services required by the Bill of Rights including such things as informing victims and witnesses of their rights; making appropriate referrals to medical, social, or other appropriate services; assisting in preparing victims or witnesses for court; and so forth. Funding for the Victim/Witness Program is provided to each circuit solicitor through appropriations by the General Assembly. See Part I, Section 10 of Act No. 201, 1985 Acts and Joint Resolutions.

The relevant provisions of Act No. 201, Section 10 of Part I, include the following:

Provided, Further, That notwithstanding any other provisions of law the solicitor in each judicial circuit shall appoint such staff as may be practicable to serve at the pleasure of the solicitor and have such

Mr. McKeown  
Page 2  
March 26, 1986

duties and responsibilities as the solicitor may direct. The compensation and related employment expenses for such appointed staff shall be paid from funds provided in this Section under "Judicial Circuit (16)-State Support", and such funds may be utilized in conjunction with local and federal funds.

....

Personnel employed under the provisions of this section shall be employees of the administering county but all personnel costs, including fringe benefits, shall be paid by the administering county from funds provided under provisions of this section.

....

Provided, Further, That the \$350,000.00 appropriated in this section for a Victim/Witness Program shall be equally divided among the judicial circuits. The funds for each circuit shall be distributed to the solicitor's office of the circuit and only used by the solicitor for the purpose of establishing a Victim/Witness Program in the circuit which shall provide, but not be limited to, the following services:

....

Provided, Further, That it is the intent to the General Assembly that the amounts appropriated in this section for victim assistance programs in solicitors' offices shall be in addition to any amounts presently being provided by the county for these services and may not be used to supplant funding already allocated for such services. Any reduction by any county in funding for victim assistance programs in solicitors' offices shall result in a corresponding decrease of state funds provided to the solicitors' office in that county for victim assistance services. Each

Mr. McKeown  
Page 3  
March 26, 1986

solicitor's office shall submit an annual financial and programmatic report which describes the use of these funds....

....

Provided, Further, That each solicitor shall expend state support funds in accordance with the accounting procedures and regulations of the administering county....

....

Another statute which must be considered is Section 1-7-407 of the Code, providing:

Each solicitor shall enter into an agreement with a county within his circuit to administer the funds so provided and the funds shall be directed to the administering county. The administering county shall account for the receipt and disbursement of the funds separately from any other funds administered by the county.

The solicitors may expend the funds for the employment of additional assistant solicitors, investigators and payment of expenses related to employment of such additional personnel, including fringe benefits and travel.

Personnel employed under the provisions of §§ 1-7-406 through 1-7-407 shall be employees of the administering county but all personnel costs, including fringe benefits, shall be paid by the administering county from funds provided under provisions of §§ 1-7-406 through 1-7-407.

With these statutes in mind, the questions you have raised will now be examined.

Question 1

Are personnel employed by the solicitor to administer the Victim/Witness Program statutory employees of York County so as to be eligible for paid-up hospitalization upon retirement?

Mr. McKeown  
Page 4  
March 26, 1986

By Section 1-7-407 of the Code (second paragraph) and the second portion of the first proviso above cited from Act No. 201, it is clear that these personnel would be county employees. Persons administering the Program would fall within "such additional personnel" of Section 1-7-407; further, these persons would be included within "Personnel employed under the provisions of this section" which could only refer to Section 10 of Part I of the Act. From the clear language of these statutes, such personnel would be considered county employees and thus eligible for county employee benefits.

From the virtually identical language of both Section 1-7-407 and the proviso just discussed, the funding for fringe benefits is provided through appropriations made to each solicitor as administered by the appropriate county.

#### Question 2

Are Personnel employed by the solicitor to administer the Victim/Witness Program entitled to unemployment and workers' compensation coverage afforded by the county to its other employees?

Based on our response to your first question, we would again respond affirmatively that such employees would be entitled to the same benefits as other county employees, funded as stated in Question 1.

#### Question 3

Are personnel employed to administer the Victim/Witness Program subject to the county personnel policies and procedures ordinance enacted pursuant to Section 4-9-30 (7) of Code, with respect to county policies governing vacation time, paid-up holidays, and so forth?

By Section 4-9-30 (7) of the Code, a county council is given the power

to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is

Mr. McKeown  
Page 5  
March 26, 1986

vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official ... .

In addition, Section 1-7-405 of the Code provides that employees of a solicitor serve at his pleasure. Thus, the hiring and firing of personnel would be within the discretion of the solicitor, considering budgetary constraints and other factors. See Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985). Other than for purposes of hiring and firing, persons employed by a solicitor would be subject to county policies, including such matters as holidays. But see Ops. Atty. Gen. dated January 24, 1985 and February 7, 1978. We are advised that it is apparently the common practice in solicitors' offices that his non-State employees take county, rather than State, holidays.

Question 4

If personnel employed to administer the Victim/Witness Program are statutory employees of York County, how should fringe benefits such as paid-up hospitalization insurance, workers' compensation and unemployment compensation coverage, etc. be funded?

This question is answered by the provisos quoted above and the provisions of Section 1-7-407, which provide that the costs of fringe benefits shall be paid by the county from funds provided under Section 10 of Part I of the Appropriations Act, Act No. 201 of 1985.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if we may provide additional assistance or clarification.


Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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