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ALAN WILSON
ATTORNEY GENERAL

December 12, 2014

The Honorable Michael A. Pitts
Representative, District No. 14
327-C Blatt Building
Columbia, SC 29201

Dear Representative Pitts:

You have requested an opinion concerning potential representation of a county veterans' affairs officer who may be sued. By way of background, you state the following:

[i]t is my understanding that a county veterans' affairs officer has authority to hire and discharge his employees. My question is what type of legal representation, resources or protections are available for a county veterans' affairs officer should one of his employees file a lawsuit based upon a personnel action?

Law/Analysis

Obviously, we are unaware of the specific facts surrounding the potential lawsuit which you reference. Moreover, we have no knowledge of what potential claims or legal theories which may form the basis of any such suit. However, with those caveats in mind, we will attempt to answer your questions.

In an opinion, dated November 18, 2011, we addressed the status of a county veterans affairs officer under the law. See Op. S.C. Atty. Gen., November 18, 2011, 2011 WL 6120333. In that opinion, we referenced an earlier opinion on the same subject, dated October 21, 2011. In the November 18, 2011 opinion, we concluded as follows:

[t]he county veterans' affairs officer, an official appointed by an authority outside county government, is not a "county employee" for purposes of a county grievance policies pursuant to § 4-9-30(7). The county veterans' affairs officer is further vested with the authority to manage personnel in his office, including hiring and discharging personnel, without oversight by the county administrator or council. Consistent with previous opinions of this Office, however, the county veterans' affairs officer remains a county officer rather than a state officer. The

county veterans' affairs officer, therefore, would not be subject to the State's personnel policies in this regard. Further, based on our review of the law governing the county veterans' affairs officer, see §§ 25-11-10 et seq., we are of the opinion there is no legislative authority empowering the delegation to adopt grievance policies applicable to the veterans' affairs officer. . . .

(emphasis added). Thus, in our view, the county veterans' affairs officer is a county officer, rather than a state officer. Therefore, as this Office typically represents state officers and officials, rather than county officers, the veterans' affairs officer would likely have to rely upon other representation, such as through the county.

In an opinion, dated March 16, 1998 (1998 WL 196482), we addressed the obligations of a county to defend its officers. There, we discussed the representation of county boards of election. We opined as follows:

[a]s an initial matter, County Boards of Registration and Election are responsible for, among other things, the registration of electors who apply for registration in the county and the carrying out of the election in the county. . . . (citations omitted). This Office has previously concluded that county election commissioners are county officers, despite the fact that they are appointed by an authority "outside county government." Op. Atty. Gen. dated April 6, 1989. It follows that, county boards of registration and election, as the units responsible for the conduct of the election process in the county, are court offices. The fact that the county government does not have the power to appoint members of the board does not change their identity as county offices.

As to your specific question, since the Board of Elections and Registration is a county office, McCormick County would have the same responsibility in providing legal advice and paying for legal representation for the Board as it would for any other county agency or office. In many counties, the county attorney by county ordinance or contract, represents county government agencies in civil matters.

In this instance, we are unaware of whether the county attorney would represent the veterans' affairs officer in any litigation or whether the county would pay outside counsel for such representation. See Op. S.C. Atty. Gen., February 15, 1985, 1985 WL 259128. [where county attorney is unavailable due to conflict of interest, both council and supervisor "possess authority to hire independent counsel to represent their respective positions in the litigation" regarding official duties]. Nevertheless, our previous opinions conclude it is the duty of a county to provide representation in civil litigation to its officers and employees for acts performed within the scope of their duties.

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In addition, insurance coverage, such as through the Insurance Reserve Fund, may be applicable. Generally, where damages are sought, there is IRF coverage unless intent to harm is alleged. Of course, it is up to the IRF as to whether coverage is applicable.

Moreover, if a Tort Claims Act claim is alleged, the county would be substituted for the officer or employee. However, the officer or employee might remain in the suit if non-Tort Claims Act allegations or claims are made.

I trust this advice is helpful to you. Please let us know if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General