

1982 WL 189248 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1982

**\*1 Re: Opinion Request—Workmen's Compensation, Public Welfare**

Honorable Isadore E. Lourie  
Chairman  
Workmen's Compensation Study and Review Committee  
The Senate of South Carolina  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Lourie:

You have requested the opinion of this office as to whether or not workmen's compensation is mandatory for AFDC recipients who are participating in a state-wide program whereby these persons work in specific businesses in exchange for aid in AFDC grants and food stamp allotments.

An analysis of the relevant case law indicates an early split of authority on this issue. The majority of the states refused to extend compensation benefits to relief workers on the theory that they could not contract for employment. [96 A.L.R. 1154](#). The minority jurisdictions followed what is known as the English view that the master-servant relationship is not defeated by the fact that the employment is part of a relief effort. [Ibid](#), pg. 1163. The bulk of the cases on both sides were decided in the era of the Great Depression.

A better approach now espoused by the commentators is to distinguish the issue with regard to the effect that failure to work would have upon a recipient's benefits.

'Probably the most sound and workable distinction that can be drawn is this: A recipient of relief who would continue to receive the same assistance whether he worked or not is not an employee, while a laborer whose receipt of payment is dependent on and in proportion to his labor should be considered an employee, regardless of evidence that the entire job on which he is working was set up to provide a means of relieving distress among the unemployed and destitute. The former's work is incidental to his receipt of support; the latter's work is of the essence of the bargain between himself and the employer.' ([Larsen: Workmen's Compensation](#), § 47.32).

The situation at hand clearly requires the welfare recipient to be classified as an employee within the meaning of [§ 42-1-130, Code of Laws, 1976](#). Refusal to participate in the program warrants a reduction in the amount of the AFDC supplement and in the food stamp allotment. In essence, the worker is contracting for increased benefits in return for his services.

The most recent case in this area is [Scissons v. City of Rapid City, S.D. 251 N.W.2d 681 \(1977\)](#). The Supreme Court of South Dakota granted workmen's compensation to a claimant injured while working on a garbage truck owned by the city under a county program of work relief for the poor. These applicants were compensated by the county in the form of vouchers redeemable for necessities at various stores within the community. The case specifically held that a poor relief worker could be an employee and followed the distinction used by Professor Larsen and quoted above.

South Carolina has not directly addressed this particular problem. However, South Carolina courts have held that the Workmen's Compensation statute defining 'employee' ([§ 42-1-130, Code of Laws, 1976](#)) should be construed liberally for the protection

of the worker. [Murdaugh v. Robert Lee Const. Co.](#), 185 S.C. 497, 194 S.E. 447 (1937); [Ham v. Mullins Lbr. Co.](#), 193 S.C. 66, 7 S.E.2d 712 (1940); [Cokely v. Robert Lee, Inc.](#), 197 S.C. 157, 14 S.E.2d 889 (1941); [Pate v. Plymouth Mfr. Co.](#), 198 S.C. 159, 17 S.E.2d 146 (1941). South Carolina courts have also held that the basic purpose of the Workmen's Compensation Act is inclusion of employers and employees and not their exclusion, and doubts of jurisdiction must be resolved in favor of inclusion rather than exclusion. [Horton v. Baruch](#), 217 S.C. 48, 59 S.E.2d 545 (1950); [DeBerry v. Coker Freight Lines](#), 234 S.C. 304, 108 S.E.2d 114 (1959); [Brown v. Morehead Oil Co.](#), 239 S.C. 604, 124 S.E.2d 47 (1962), [Pyett v. Marsh Plywood Corp.](#), 240 S.C. 56, 124 S.E.2d 617 (1962).

\*2 In conclusion, it is the opinion of this office that compensation must be granted in view of the recent trend in case law to this effect and the mandate provided by the South Carolina cases interpreting the purpose of the Workmen's Compensation Act. Sincerely,

Clifford O. Koon, Jr.  
Assistant Attorney General

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