

1982 WL 189284 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 6, 1982

*1 Mrs. Phyllis B. Beighley
Insurance Benefits Manager
State Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29211-2547

Dear Mrs. Beighley:

This is in response to your recent inquiry regarding the eligibility of employees of the Old Ninety-Six Tourism Commission for coverage under the State Group Insurance Benefits program. For the reasons that follow, it is the opinion of this office that employees of this commission are not eligible to participate in the State Group Insurance Benefits program.

The Old Ninety-Six Tourism Commission was created by Act No. 59 of 1981, 62 Statutes 86, which provides, in part: Section 1. There is hereby created the Old Ninety Six Tourism Commission (commission) for the purpose of promoting the economic development through a formal program of tourism promotion in the following counties: Abbeville, Edgefield, Greenwood, Laurens, McCormick and Saluda. The commission shall be composed of two members from each county, to be appointed by the Governor upon the recommendation of the legislative delegation of each county, to serve for terms of four years and until their successors are elected and qualify.

The General Assembly appropriated forty-four thousand dollars (\$44,000) for the Commission in the 1981-82 Appropriations Act (Act No. 178 of 1981). This appropriation is found within the section of the Appropriations Act devoted to the Department of Parks, Recreation and Tourism (Section 66). Under item VIII ('Special Promotions') of Section 66, there is an appropriation of forty-four thousand dollars (\$44,000) for the Upper Savannah Tourism Commission. I have been advised by PRT that the Old Ninety-Six Tourism Commission is what was formerly known as the Upper Savannah Tourism Commission.

The statutory authorization for the state's group insurance programs is found in a proviso to Part I, Section 14 of the 1981-82 Appropriations Act (1981 Acts and Joint Resolutions at p. 1066) which provides, in pertinent part:

[T]he provision of group health, life, accidental death and dismemberment and disability insurance for active and retired employees of the state and the public school districts of South Carolina and their eligible dependents shall be in accord with such plans as may be determined by the Budget and Control Board to be equitable and of maximum benefit to those covered. [Emphasis added]

As can be seen, not all public employees in this state are eligible to participate in the State Group Insurance Benefits program. Only state employees (active or retired) and public school district employees (active or retired) may avail themselves of the state's group insurance plans.^{al} Therefore, unless employees of the Old Ninety-Six Tourism Commission are state employees, they are not eligible for coverage under the state group insurance program. See Unpub. Ops. Atty. Gen., August 7, 1978, from Assistant Attorney General Frank H. DuRant to Insurance Benefits Manager, State Personnel Division and opinions cited therein (copies enclosed).

*2 There is no statutory definition of the term 'state employee' for purposes of determining eligibility to participate in the state group insurance programs. Nor has state employee status been expressly conferred upon employees of the Commission

by statute. Therefore, the determination of whether employees of the Commission are state employees must turn on whether the Commission employees are paid directly by the state for the services they perform. See 81A. C.J.S. States § 81 (1977); see also Unpub. Ops. Atty. Gen., June 8, 1972, from Assistant Attorney General Hardwick Stuart, Jr., to Director, State Personnel, at p. 2 (copy enclosed). It is my understanding that the Commission has but one employee, its Executive director Ms. Hite, and that she is not compensated for her services directly by the State but is instead paid by the Commission which is not itself a state agency.^{aa1} Under these circumstances, it is the opinion of this office that Ms. Hite is not a state employee; consequently, she is not eligible to participate in the State Group Insurance Benefits program. See Unpub. Ops. Atty. Gen. of August 7, 1978, concerning employees of the Santee-Cooper Counties Promotion Commission and August 20, 1976, concerning employees of the Charleston County Aviation Authority which are consistent with this opinion. (copies enclosed)

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

- a1 [Section 8-1-120, Code of Laws of South Carolina](#), 1976, entitles all county health department employees to coverage under the state's group insurance plans without regard to the source of their compensation.
- aa1 The Commission is similar to the Santee-Cooper Counties Promotion Commission created by Act No. 55 of 1968. In an August 17, 1978, opinion this office concluded that the Santee-Cooper Counties Promotion Commission was not a state agency because, among other reasons, (1) it provided a service for five counties only, not the entire state; (2) the commission was not registered with the State Personnel Division; and (3) the commission's employees were not subject to the State Classification and Compensation Plan. Unpub. Ops. Atty. Gen., from Assistant Attorney General Frank H. DuRant to Insurance Benefits Manager, State Personnel Division, at p. 2. That same reasoning is apposite here and supports a conclusion that the Old Ninety-Six Tourism Commission is not a state agency.

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