1976 S.C. Op. Atty. Gen. 125 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4308, 1976 WL 22928

Office of the Attorney General

State of South Carolina
Opinion No. 4308
March 24, 1976

***1** Section 72–456, South Carolina Code of Laws, 1962, as amended, does not provide Workmen's Compensation coverage to individuals volunteering services and not under a contract of hire or employment with a governmental subdivision.

To: John W. Scott
Director
State Workmen's Compensation Fund

QUESTION PRESENTED:

Does the State Workmen's Compensation Fund have authority to provide coverage for volunteers working in various capacities for governmental sub-divisions, particularly civil defense and auxiliary police.

DISCUSSION OF ISSUE:

The question asked is whether private citizens, volunteering time and service as auxiliary policemen, civil defense workers, and in similar community service endeavors, are eligible for Workmen's Compensation coverage through the State Workmen's Compensation Fund. Section 72–456, South Carolina Code of Laws, 1962, as amended, determines the scope of coverage by the State Fund as follows:
Notwithstanding anything to the contrary contained in § 72–11 the provisions of this chapter shall apply to all officers and employees of this State and of any county, municipality or other political subdivision thereof or any agency or institution of the State which has elected to participate under this chapter under the provisions of § 72–455.

In cases of officers or employees who are on a partial or total fee basis or whose official duties require only part time, the Director may fix, for the purposes of this Chapter, the average weekly wage of such officer or employee, not in excess of forty dollars, and collect changes from the employer of such officer or employee on the basis of the average weekly wage so fixed. (emphasis added)

The statute expressly limits coverage to ‘officers and employees'; therefore, the question becomes whether the workers in question here are officers or employees of the State or one of its political subdivisions. The general workmen's compensation law applicable in determining employee status is helpful but not dispositive of the question. In the usual situation, the Industrial Commission or court look for four particular factors—right to and exercise of control, method of payment, furnishing of equipment, and right to fire. See Tharpe v. G. E. Moore Co., 254 S.C. 196, 174 S.E.2d 397 (1970) and Chavis v. Watkins, 256 S.C. 30, 180 S.E.2d 648 (1971). Obviously, in the case of volunteers there is no payment and no right to fire, since there is no hiring in the first place. So, two of the four necessary elements of employee status are missing with volunteer workers.

Section 72–11 is helpful on the question of hiring:

The term 'employee' means every person engaged in an employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written . . ..

To achieve employee status, there must be an understanding that such a relationship is intended, which relationship would embody the elements set forth above. A 'contract of hire' certainly connotes the giving of services in exchange for pecuniary or other renumeration, and such a condition stands squarely opposed to services voluntarily given.

***2** Larson, in his treatise on Workmen's Compensation, considers 'Gratuitous workers' and concludes:
The word 'hire' connotes payment of some kind. By contrast with the law of master and servant, which recognized the possibility of having a gratuitous servant, the compensation decisions uniformly exclude from the definition of 'employee' workers who neither receive or expect to receive any kind of pay for their services.

Larson, Workmen's Compensation, Section 47–41. Larson goes a step farther and considers performance of patriotic duties, stating, 'The performance of voluntary patriotic or charitable duties ordinarily leads to no presumption of expected payment.' Larson, Workmen's Compensation, Section 47.41(a).

A number of cases hold that volunteer services rendered on behalf of a governmental subdivision will not subject the subdivision to Workmen's Compensation liability. In the case of City of Seward v. Wisdom, 413 P.2d 931 (Alaska 1966), the court denied benefits to a citizen volunteering services to the city during an earthquake and tidal wave. The Court would not apply the so-called 'emergency doctrine' rule since there had been no impressment. See also Edwards v. Hollywood Canteen, 160 P.2d 94 (Cal. App. 1944), aff'd 27 Cal. 2d 802, 167 P.2d 729 (1946). Finally, in Ferrell v. Industrial Commission of Arizona, 79 Ariz. 278, 288 P.2d 492 (1955), the Court denied benefits, stating:
It is to be noted that this part of the Act makes no reference to volunteer workers. This would seem to require more than mere voluntary service as an essential feature of the employment relationship. The injured person must be under a legal duty to do the the acts being performed when he is injured. A study of the above and other provisions of the Workmen's Compensation Law indicates that regardless of the manner in which the employment relationship arises—whether by reason of 'election, appointment or contract of hire'—some form of duty to serve and remuneration therefore must exist before one may be considered an employee of the state.

The South Carolina Supreme Court has not reached the precise question presented here, but in a recent case the court gave some indication of the course it would likely follow. In LaMott v. City of West Columbia, 259 S.C. 594, 193 S.E.2d 592 (1972), the court denied benefits to the dependents of a West Columbia fireman who drowned while helping co-workers search for a sunken boat. The fireman was off-duty at the time of the accident and had not been called by his superiors; he merely volunteered his services. This would seem to be a much stronger case in which to find coverage than that of private citizens volunteering services to the community in an area unrelated to their normal employment.

CONCLUSION:

Citizens volunteering services to a political sub-division, without a contract of hire and without compensation, are gratuitous workers and do not some within the scope of coverage provided by the State Workmen's Compensation Fund in Section 72–456.

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