

1979 WL 43486 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1979

\*1 Mr. William T. Hunter  
County Attorney  
P.O. Box 156  
Newberry, SC 29108

Dear Sir:

In regards to your letter requesting an opinion as to the extent of the liability of Newberry County for damages arising from an injury to a juror as she stepped out of the jury box, I am advising you that it is the opinion of this Office that Newberry County is not liable as explained in the following discussion.

One theory by which Newberry County could conceivably be held liable for the injury suffered by the juror as mentioned above would be pursuant to the Workmen's Compensation Act as it applies to the State and other governmental entities including Newberry County. However, in order to be covered by the Workmen's Compensation Act, there must exist an employer/employee relationship. The court has established a test to determine this relationship and no award can be granted under the Act unless the relationship exist. The determining factor is the right of the employer to control the employee. Four factors which establish the right of control are:

- (1) Direct evidence of right or actual exercise of control of employment;
- (2) The method of payment;
- (3) The furnishing of equipment;
- (4) The right to fire.

In addition, the employer/employee relationship is contractual in nature and to constitute one as an employee, it is essential that there shall be a contract of service.

Applying the above test to the role of a juror readily indicates that a juror does not fall within the coverage of the Workmen's Compensation Act as set forth in [§ 42-1-10 et seq. of the Code of Laws of South Carolina \(1976\)](#) as amended.

However, it is widely recognized that the Workmen's Compensation Act is liberally construed in favor of coverage for the employee. If by a liberal construction, a juror was held to be an employee of the County, the exception excluding casual employees' from coverage under the Workmen's Compensation Act would come into play. A casual employee is excluded although the work being done is in the course of his employer's business or occupation, [Smith-v-Coastal Tire and Auto Service, 263 S.C. 77, 207 S.E. 2d 810 \(1974\)](#). The [Smith](#) case goes on to point out that where employment cannot be characterize as permanent or periodically regular, but occurs by chance or with the intention and understanding on the part of the employer and employee that it shall not be continuous, the employment is said to be casual and therefore not compensable under the Workmen's Compensation Act.

Therefore based on the above argument, a juror is not within the group of persons covered by the Workmen's Compensation Act and therefore any cause of action would have to be in the nature of a tort claim against the County.

The Supreme Court of the State of South Carolina in the case of [Belton-v-Richland Memorial Hospital](#), 263 S.C. 446, 211 S.E. 2d 241 (1975), upheld the doctrine of governmental sovereign immunity in ex delicto actions against the County. Although the doctrine of governmental sovereign immunity is undergoing changes in South Carolina at this time, it is the opinion of this Office that sovereign immunity bars an action of this nature against the County of Newberry.

\*2 Based upon the arguments as set forth above, it is the opinion of this Office that the County of Newberry is not liable for the injuries sustained by a juror while performing jury duties. The juror does not come within the definition of employee as used in the Workmen's Compensation Act and therefore is not entitled to Workmen's Compensation coverage, and the doctrine of sovereign immunity bars any tort action of this nature against the County of Newberry.

Yours truly,

Evans Taylor Barnette  
State Attorney

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