

1979 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-135, 1979 WL 29137

Office of the Attorney General

State of South Carolina

Opinion No. 79-135

December 5, 1979

\*1 1. An assisting employee from another state under the provisions of the Interstate Civil Defense Disaster Compact or the provisions of the Southern Interstate Nuclear Compact is not considered an employee of the State of South Carolina if he is sued for negligence committed while performing his duties.

2. The State of South Carolina has not, in general, waived its sovereign immunity from tort claims.

3. The State of South Carolina has, under the Interstate Civil Defense Disaster Compact granted immunity from liability to party states, their officers, and their employees who are rendering aid to the State of South Carolina under the provisions of the Interstate Civil Defense Disaster Compact.

TO: Charles A. Perry  
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QUESTIONS PRESENTED:

1. [Under South Carolina Law] Is an assisting employee [as contemplated under the Southern Mutual Radiological Assistance Plan (SMRAP)] from another state considered to be an employee of the State of South Carolina if he is sued for negligence committed while performing his duties?

2. To what extent has [South Carolina] waived sovereign immunity for tort claims? Is there a limit on the damages an injured party can recover from a suit against the state for a negligent act by a state employee?

3. Under [South Caroling] law, what is the borrowed employee's personal liability for negligence committed in a situation [in which he is a part of an emergency response team sent to South Carolina from another state]?

AUTHORITIES:

Statutes:

Code of Laws of South Carolina, 1976, as amended, (cum.Supp. 1978):

Section 25-9-10 et seq. (Interstate Civil Defense Disaster Compact) [CDDC]

Section 13-7-410 et seq. (Southern Interstate Nuclear Compact) [SINC]

Section 15-77-210 et seq. Title 15, Chapter 77, Article 3 (Governmental Motor Vehicle Claims Act)

Cases:

[Vance Trucking Co. v. Canal Ins. Co.](#), 249 F.Supp. 33 (D.S.C. 1966), [aff'd](#), 395 F.2d 391, [cert. den.](#), 393 U.S. 841. [Morris v. State Highway Department](#), 264 S.C. 369, 215 S.E.2d 430 (1975)

Other:

Southern Agreement for Mutual State Radiological Assistance (a supplemental agreement to Title 13, Chapter 5, Article 5 of the 1976 Code of Laws of South Carolina as provided by Article VI of § 13-7-430 and § 13-7-460.) [SAMSRA]

Southern Mutual Radiological Assistance Plan, Revision 1 (May, 1979), authorized under the provisions of SAMSRA. [SMRAP]

DISCUSSION:

I. Status of Employees

You have asked whether an assisting employee from another state under the Southern Mutual Radiological Assistance Plan (SMRAP) is considered to be an employee of the State of South Carolina if he is sued for negligence committed while performing his duties. In our opinion, he is not, but remains an employee of the sending state. Our opinion is based upon our conclusion that such an assisting employee is dealt with by the State of South Carolina as an employee of a traditional independent contractor, and remains the agent and employee of the sending state.

\*2 Article III of the Civil Defense Disaster Compact (CDDC) ([§ 25-9-20 of the 1976 Code](#)) provides in pertinent part: 'Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.' [Emphasis Added]

It would therefore appear that the control over the individual employee resides with his regular, lending employer, while the unit as a whole may be controlled by the State of South Carolina. Since South Carolina may not exercise direct control over the individual employee, there cannot be a master-servant relationship, and the relationship results in that of an independent contractor. [Vance Trucking Co. v. Canal Insurance Co.](#), 249 F.Supp. 33 (D.S.C. 1966), [aff'd](#) 395 F.2d 391, [cert. den.](#) 393 U.S. 841. This view is also strongly supported by the accompanying provisions of Article III of the Southern Agreement for Mutual State Radiological Assistance (SAMSRA) and Article VIII of the CDDC ([§ 24-9-20 of the 1976 Code](#)) both of which use the word 'reimburse', which contemplates the payment of the individual loaned employees' salaries and other expenses of the loaned response teams by the state which has loaned them, the State of South Carolina 'reimbursing' the lending state.

II. Sovereign Immunity

You have asked to what extent the State of South Carolina has waived sovereign immunity for tort claims, and whether there is a limit on the damages an injured party can recover from a suit against the state for the negligent act of a state employee. The general rule in this state is that the state may not be sued without permission arising from an Act of the General Assembly or the State Constitution, and any waiver of sovereign immunity must be strictly construed. [Morris v. State Highway Department](#), 264 S.C. 369, 215 S.E.2d 430 (1975). Since there has been no waiver of sovereign immunity in this regard, it is our conclusion that sovereign immunity for tort claims arising under emergency response provisions has not been waived, and any recovery against the state is absolutely barred thereby.

However, there may in one instance be a limited state liability under the Governmental Motor Vehicle Claims Act (§ 15–77–210, [et seq. of the 1976 Code](#)) if liability arises through the authorized use of a motor vehicle owned by this state. The limit of the state's liability in this instance is \$15,000 personal injury and \$5,000 property damage.

### III. Liability of Borrowed Employees

You have asked about the borrowed employee's personal liability for negligence committed as part of an emergency response team loaned to South Carolina. It is our opinion that if a civil defense emergency is declared under the provisions of CDDC, the borrowed employee is immune from suit. This opinion is based on Article V of the CDDC (§ 25–9–20 [of the 1976 Code](#)) which appears to grant total immunity from tort liability to the sending state, its officers, and its employees. The Article states:

\*3 ‘No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith upon the part of such forces while so engaged, or upon account of the maintenance or use of any equipment or supplies in that connection.

No similar grant of immunity appears within the Southern Interstate Nuclear Compact (SINC) (§ 13–7–410 [et seq. of the 1976 Code](#)) or within SAMSRA. Although one of the objectives of the Southern Mutual Radiological Assistance Plan (SMRAP) is ‘to provide a mechanism limiting state employee . . . personal liability for his actions [arising under the plan]’, no explicit grant of immunity is contained within SINC or SAMSRA. It therefore appears that unless a concomitant CDDC emergency is declared, the employee of the sending state would be at risk relative to personal liability for torts.

#### CONCLUSION:

Under the provisions of the Interstate Civil Defense Disaster Compact and the Southern Interstate Nuclear Compact and its supplemental agreement, an assisting employee who is a member of an emergency response team from another state remains an employee of the sending state, which state's relationship with the State of South Carolina is that of an independent contractor for services.

The State of South Carolina has not waived its sovereign immunity from tort claims.

The State of South Carolina has under the provisions of the Interstate Civil Defense Disaster Compact provided immunity from suit in tort to those employees of an emergency response team supplied to this state by another state provided such act or omission arises as a result of a good faith act or omission of the employee within the normal scope of his employment.

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