

1978 WL 35014 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 4, 1978

*1 Joe E. Berry, Jr., Esquire
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South Carolina Chapter of the American National Red Cross
1325 Laurel Street
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Dear Mr. Berry,

You have recently inquired whether [§ 15-1-310, Code of Laws of South Carolina \(1976\)](#), (Good Samaritan Statute), protects from civil liability individuals who have been trained in First Aid or CPR (Coronary Pulmonary Resuscitation) to comply with the 1970 Occupational Safety and Health Act for a particular business or industry, who are on the premises and administer either First Aid or CPR to a fellow worker.

Initially, it must be stressed that in a prior informal opinion dated December 8, 1977, issued from this office, it was pointed out that the Statute's protection depends upon the factual circumstances of each case:

This particular statute relieves from civil liability only such persons who gratuitously render emergency care at the scene of an accident or emergency to the victim thereof provided the acts or omissions to act do not constitute gross negligence or wilful or wanton misconduct. However, varying circumstances and other possible defenses which would limit or deny civil liability may influence any such liability for a particular case and thus it is not possible to provide a simple answer to the question of possible civil liability in all instances. (Opinion to Oconee County Safety Officer from Charles H. Richardson, Assistant Attorney General, December 8, 1977, p.2).

Another opinion from this office states that there is no known reason why members of a rescue service cannot take advantage of the statute provided that their services are rendered 'gratuitously' and in 'good faith' (and in the absence of gross negligence or wilful or wanton misconduct).

(Opinion to Attorney at Law from C. Tolbert Goolsby, Jr., Deputy Attorney General, October 7, 1976).

It is arguable that the intent in passing the statute was to allay the fears of malpractice suits which may have made some doctors reluctant to render emergency care, and thus the statute was passed to encourage emergency treatment of accident victims by excusing physicians [from civil liability in rendering such care](#), 39 A.L.R. 3d 222. However, [§ 15-1-310](#), like similar statutes of other jurisdictions, extends such immunity to 'any person' provided that their conduct falls within the statutory ambits of protection.

In [Dahl v. Turner](#), 80 N.M. 564, 458 P. 2d 816 (1969), under a Good Samaritan Statute providing that no person who should administer emergency care in good faith at or near the scene of an emergency should be held liable for any civil damages as a result of any action or omission by such person in administering such care, except for gross negligence, it was held that the trial court did not err in refusing to submit a 'good samaritan' issue to the jury. In regard to this particular factual situation, the court stated that if the defendant was administering 'care' in providing transportation to the plaintiff (after the plaintiff had wrecked his car, had a cut on his arm, appeared to be in a confused state, but did not want to go to a doctor), such care was not [emergency care within the meaning of the Statute](#). 39 A.L.R. 3d 222. Likewise, in interpreting a similar statute, the Alaska Supreme Court held that a police officer or other person who is under a

pre-existing duty to rescue is not covered by the Good Samaritan Law. [Lee v. State, Alaska 490 P.2d 1206 \(1971\)](#). The Georgia Court of Appeals, while recognizing the general rule that in many circumstances a person has no legal duty to assist another human being who is in danger, also has held that when some special relation exists between the parties, such as that between an officer and the prisoner in his custody, social policy may justify the imposition of a duty to assist or rescue one in peril. [Thomas v. Williams, et al., 105 Ga. App. 321, 124 S.E. 2d 409 \(1962\)](#). It is therefore at least arguable that one who is under a pre-existing duty to rescue or aid is not covered by the Good Samaritan statute.

*2 In a very recent case, the Georgia Court of Appeals in interpreting a statute very similar to [§ 15-1-310, Code of Laws of South Carolina \(1976\)](#), held not only that the statute applies to any person and not only practitioners, but also that a house owner who acted in good faith in helping to move a contractor's employee after he fell and injured his back and neck, and who did not attempt to receive any compensation for her services could not be held civilly liable for aggravation of the employee's injuries on the theory that when the house owner undertook to render aid, she was required to exercise ordinary diligence. [Wallace v. Hall, 244 S.E. 2d 129 \(1978\)](#). Cf. [United States v. Devane, 306 F. 2d 182 \(1962\)](#).

It therefore appears that whether [§ 15-1-310](#) protects from civil liability the individuals trained in First Aid or CPR depends upon the factual situation in each case depending upon the absence or presence of a pre-existing duty to aid, the presence or absence of an emergency situation, the receipt or lack of compensation for such services, and other varying circumstances.

Sincerely,

Raymond G. Halford
Deputy Attorney General

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