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South Carolina House of Representatives
**Legislative Update
& Research Reports**

Ramon Schwartz, Jr., Speaker of the House

Vol. 2

April 30, 1985

No. 17

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Legislative Update

Second Reading, Contested Calendar

Location of Landfills (H.2131). Any political subdivision, state agency or department, or any private business disposing of solid waste would not be allowed to locate a sanitary land fill within three miles outside the corporate limits of a city or town.

Sovereign Immunity (H.2266). The doctrine that "the King can do no wrong" is dead, struck down by the South Carolina Supreme Court. For the background and proposed legislation covering torts and lawsuits against the state, see the *Research Report* in this issue.

Chiropractors and Health Insurance (H.2319). This bill would include chiropractors in the group of service providers who are reimbursed through health and accident insurance policies.

According to the *American Academic Encyclopedia*, chiropractic is "a healing profession in which the spine, joints and muscle tissue are manipulated in order to restore the proper function of the nerves." Derived from the Greek meaning "practice by hand," chiropractic was coined by Daniel David Palmer (1845-1913) an Iowa grocer. Palmer founded the Palmer College of Chiropractic in Davenport, Iowa. Although five of the first fifteen graduates were physicians, more traditional medical practitioners long regarded chiropractic with suspicion, if not outright hostility. The American Medical Association did not recognize chiropractic until 1980.

There are thirteen accredited colleges of chiropractic in the United States and Canada. The four years of training include courses in anatomy, chemistry, neurology, physiology, x-ray diagnosis, and clinical work.

In order to be licensed in South Carolina a person must be licensed by the state Board of Chiropractic Examiners. A two-part exam is required: the National Boards, and a practical exam. The Boards can be exempted if the applicant took and passed them in the chiropractic college.

According to the S.C. Chiropractic Association there are currently 299 licensed practitioners in South Carolina.

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Prohibit Local Gun Control Laws (H.2256). This measure would prohibit any county, municipality, or other political subdivision from enacting ordinances controlling firearms—including transfer, ownership, possession, carrying and transportation. Any existing local laws on firearms would be made null and void.

The prime example of such ordinances comes from Morton Grove, Illinois, which in June, 1981, banned the sale or possession of private handguns. There followed a lengthy period of judicial controversy, all of which was resolved in favor of the municipality and its right to pass such regulations.

Opponents of the Morton Grove ordinance (and other gun regulatory legislation) maintain that such laws are violations of the Second Amendment to the U.S. Constitution. In December, 1981, Judge Bernard Decker of the U.S. District Court for the Northern District of Illinois ruled that the Morton Grove ordinance did not violate either the U.S. Constitution or the Illinois Constitution.

In January, 1982, the Circuit Court of Cook County held that the ordinance presented no infringement of the state Constitution. In December of 1982 the U.S. Court of Appeals in Chicago upheld this ruling, and sustained its decision in a separate ruling in March, 1983.

Finally, in October, 1983, the United States Supreme Court refused to hear the case. This refusal, according to some observers, tacitly affirmed the constitutionality of the law. The Supreme Court has ruled at least twice on this issue, and both times the Court's opinion was that the Second Amendment simply protects the states' rights to maintain a militia, and was not a blanket protection for the individual's right to possess firearms. (U.S. v. Cruikshank, 1876; U.S. v Miller, 1939.)

Water/Sewage Territory (H.2514). Looking to expand your sewer system? Planning to run some water lines out into an unincorporated area? Under provisions of this bill no water or sewage system could be run into another county unless that county passed an ordinance approving it. This would apply to systems owned or operated by a county, municipality, special purpose district, or political subdivision.

Child Support (H.2561). Legislation passed by Congress last year requires states to enact comprehensive child support enforcement laws which must go into effect by October 1, 1985.

This bill would authorize the Clerk of Court to send a notice to the delinquent obligor (the person paying support), telling what monthly obligations have been set by the court; the amount of payments in arrears; and the amount of income to be withheld. The notice also states that the obligor's employer will be contacted to withhold payment. The court has thirty days to hear this petition and 45 days to decide on it.

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The Clerk sends a message to the person's employer, ordering him to withhold one month's support obligation (which may be spread over several pay periods); and withhold an additional amount to begin paying the arrears owed.

Withholding starts the next regular pay period after the employer receives the notice. Employers can send the Clerk one check with an itemized statement telling which obligors owe what amounts and to whom. The employer can deduct a \$1.00 fee from the employee each time withholding is processed. When payments in arrears are paid up, the Clerk notifies the employer to reduce the amount withheld.

Withholding can be terminated after three years, if there are no arrears, and the obligor demonstrates an ability to continue support payments. A notice to the employer to withhold wages stays in effect until further notice from the Clerk.

Control of Companion Animals (H.2013). "Companion animals" are, basically, dogs and cats, although this bill does include "foxes and other canines." The legislation sets certain standards for control of these animals, and authorizes counties and municipalities to enact and enforce ordinances consistent with them.

Basically, this legislation would require persons to keep their companion animals under control: companion animals would have to stay on their owner's property unless on a leash or other restraint. Persons would be forbidden to keep a "vicious companion animal" unless it was properly restrained.

Animals running loose would be impounded in an animal shelter. An owner would have to pay a \$25 fee and prove that the animal had its rabies shots. If not picked up in 21 days, the animal would either be destroyed or turned over to a humane society.

Penalties for violating these provisions, and for interfering with animal control officers or attempting a daring pre-dawn "pound break" would be a fine of between \$50 and \$200. Persons violating Section 47-3-1 of the Code (relating to the regulation of dogs and other domestic pets by counties) could be fined between \$100 and \$300.

Election for State Fire Commission Chairman

Wednesday, May 1, the General Assembly will elect a Chairman of the State Fire Commission. The Commission recommends candidates for State Fire Marshal; provides direction in making state-wide fire prevention and control plans; maintains records on fire data; and establishes minimum fire prevention regulations.

There are 19 members, 18 of which are appointed by the Governor with the advice and consent of the Senate; the chairman is a fire chief elected by the General Assembly. There are two candidates for the position.

Lewis Boyd Lee was born in Monarch, S.C. in 1943 and now lives in Newberry, where he is Chief of the Fire Department. He has a BS degree from Limestone College. He was appointed to the State Fire Commission from Congressional District 3 in 1980; his term expired in 1983, and he is currently serving until a successor is appointed. He is a member of a number of professional fire fighting associations. He is married and has one stepdaughter.

David A. MacLellan was born in Cleveland, Ohio, and is now Fire Chief of the Sea Pines-Forest Beach Fire Department on Hilton Head. He was enrolled in the Fire Science Associate Degree at Beaufort Technical College, but did not finish the program because several classes needed to finish the degree were not offered by the school. He was elected Chairman of the State Fire Commission in April, 1980. He is married and has two daughters.

Latest Unemployment Rates for S.C. Counties

The South Carolina Employment Security Commission has released the unemployment rates for March. The general state unemployment rate dropped from 7.6% in February to 6.8% in March. According to the Commission, this translates into an additional 32,000 persons working. The number of persons on the unemployment role is estimated to be 104,000.

Textiles continue to be a troublesome area: 700 jobs were lost in plant operations during March, and the related apparel industry lost 400 jobs. Total textile employment has reached its lowest point since World War II--107,300 persons.

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Increased employment was felt mainly among tourist and tourist-related operations. Beaufort, Richland and Charleston counties, for example, were among the counties with the lowest rates. Twelve of the state's counties, on the other hand, had unemployment rates in double digits.

The list of counties and unemployment rates follows.

<u>County</u>	<u>Rate</u>	<u>County</u>	<u>Rate</u>
Marlboro	19.1	Colleton	7.9
McCormick	15.0	Barnwell	7.9
Abbeville	13.0	Saluda	7.7
Georgetown	12.6	Hampton	7.6
Marion	12.4	Chesterfield	7.6
Chester	12.1	Horry	7.6
Dillon	11.6	Aiken	7.5
Union	11.0	Fairfield	6.9
Edgefield	10.8	Sumter	6.9
Clarendon	10.7	Jasper	6.6
Greenwood	10.6	York	6.4
Lee	10.2	Pickens	6.4
Allendale	9.7	Spartanburg	6.2
Darlington	9.3	Cherokee	6.2
Williamsburg	9.3	Newberry	6.1
Anderson	9.2	Greenville	5.7
Lancaster	9.2	Calhoun	5.5
Florence	9.2	Berkeley	5.0
Oconee	8.5	Dorchester	4.6
Laurens	8.3	Charleston	4.1
Bamberg	8.1	Lexington	3.7
Kershaw	8.1	Richland	3.6
Orangeburg	7.9	Beaufort	3.6

Sovereign Immunity

What is Sovereign Immunity?

Sovereign Immunity is the doctrine that a government cannot be held responsible in the same way an individual or private concern can be. In other words, the state cannot be sued because of the negligence of its employees.

Actions which cause injury or loss are called "torts," (except those arising from breach of contract) and result in civil actions. If loss is proven the injured party is awarded damages. The proposed addition to the South Carolina Code is therefore titled the "South Carolina Tort Claims Act."

The Court Rules

The guardian of Jamie McCall sought to sue the School District of Greenville County; the District claimed that it could not be sued because of the doctrine of sovereign immunity.

The State Supreme Court decided the case of McCall et. al. v. Batson, et. al. by abolishing the doctrine of sovereign immunity in this state, and overruling 122 previous cases decided on the basis of the doctrine. Legislation has been introduced to redefine and restructure sovereign immunity for the state (H.2266, S.283).

An Old Doctrine

Justice Chandler, in a concurring opinion with Justice Ness, took the opportunity to review the history of sovereign immunity.

The doctrine is a court-created one; that is, it arises from a court ruling, rather than legislative action. The first case was in 1788 in England; the court ruled that a citizen's injury caused through negligence of a county employee was not a cause for legal action. "It is better that an individual should sustain an injury than the public suffer an inconvenience," the court said. It also added the famous line, "The king can do no wrong," in effect insulating the government from any lawsuit.

The doctrine was first applied in the United States in Massachusetts in 1812, and soon spread throughout the new country. According to Justice Chandler, the most logical reason for the use of sovereign immunity was that "the new states were financially unable to respond in damages to meritorious claims based upon negligence in their governmental activities." In other words, sovereign immunity saved governments money.

The doctrine was first used in South Carolina in 1822 (Young v. Commissioners of Roads). Young suffered property damages to his wagon and horses from a defective bridge in the Edgefield district; he sought to sue, but the court cited the English case as precedent and Young's suit was dismissed. Since then the state, the counties, the municipalities, state colleges, public hospitals, parks and all other government bodies have been protected from liability. There were a handful of exceptions, mostly dealing with highways, and with damages limited to at most \$30,000.

Exceptions to the doctrine were long held to be limited to either specific waiver of immunity by the state, or constitutional provisions. An example of the second would be the prohibition against the state confiscating private property without compensation, violation of which has led to at least one suit against the state.

However, in the case of Kinsey Construction Company v. S.C. Department of Mental Health, the State Supreme Court held that when the State entered into a contract it "implicitly consents to be sued and waives its sovereign immunity to the extent of its contractual obligations." (See *S.C. Law Review*, Volume 39.) Before this case it was commonly held that a waiver of sovereign immunity had to be express, and could not arise by implication. This ruling was a further restriction of the sovereign immunity doctrine.

An Unfair Doctrine

"It is doubtful that any other tenant in American jurisprudence has been so broadly assailed as the doctrine of governmental immunity," Justice Chandler wrote. He had almost a page of quotations from other courts attacking sovereign immunity as they abolished it. (Thirty-six other jurisdictions have rejected the doctrine.) The basic premise of almost every attack on sovereign immunity: it just isn't fair. "Liability follows negligence," the legal axiom says, and many believe a negligent government should be treated on an equal footing with a negligent individual or corporation.

Leave it to the Legislature?

The justices addressed the question as to whether they should leave it to the General Assembly to change the sovereign immunity situation. Obviously the majority thought not, but two members dissented.

Justice Chandler argued that the doctrine had been established by a court, continued by court decisions and court precedents, and could therefore be struck down by a court. He expressed the wish that "the General Assembly will act." To give the General Assembly this time, Justice Ness' opinion delayed the implementation of the decision "to allow the legislature to address any problems or hardships created by the abrogation of sovereign immunity."

Justices Littlejohn and Gregory weighed in with dissenting opinions. Littlejohn said the issue was "a matter of broad public policy" which should "be left to the legislative body." Gregory agreed, stating that "I would defer to the wisdom of the legislature, firmly believing they are best suited to determine appropriate timing and limitations of any abrogation of the doctrine of sovereign immunity."

PROPOSED LEGISLATION

The proposed bill (H.2266) states its purpose in the first section:

...it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, is only liable for torts within the limitations of this chapter and in accordance with the principles established herein.

When Governments Would NOT Be Liable?

The legislation specifically exempts the state and its political subdivisions from liability for losses caused by action or inaction in a number of particular situations. These are all connected with the operation of government as government. Examples are:

Legislative or judicial activities, or administrative activities relating to them, including the execution of court orders;

Adoption, enforcement, or compliance with laws, or conversely, not adopting, enforcing or complying with laws;

The exercise of discretion or judgment by government employees;

Extraordinary conditions over which governments have little or no control; for example, the failure to provide adequate police or fire protection during times of civil disobedience, riots, insurrection or rebellion; or snow or ice conditions, except where they are caused by employee negligence;

Actions that take place during regular government operations, such as the assessment or collection of taxes; licensing and regulatory procedures; and the conduct of elections;

Any claims covered by Workers' Compensation Act;

Absence, poor condition or malfunction of traffic and road signs, unless the problem is not corrected within a reasonable time; However, nothing in the bill implies that the government can be held responsible for failing to put the signs up in the first place;

Security, maintenance and supervision of public property used for recreation, unless a defect is not corrected within a reasonable time;

Decisions to release prisoners;

Activities of public hospitals, except as covered by existing law;

Accidents involving public school buses, except as covered by existing law.

The bill also specifically remarks that it is not to be seen as consent for the state to be sued in any state court outside South Carolina.

What WOULD Government Be Liable For?

Aside from these particulars, the bill states that the state, its agencies and political subdivisions are "liable for its torts in the same manner and to the same extent as a private individual under like circumstances..."

Where and When Would the Claims Be Filed?

If the case is against the State, the claim is filed with the Budget and Control Board, or with the particular agency; a claim against a political subdivisions is filed with that subdivision; when there is doubt, the claim can be filed with the Attorney General. Such a claim may be reviewed by a political entity within one year after the loss was or should have been discovered.

Any action for damages in a court of law must be filed within two years of the loss or action is "forever barred." Such action at law may be initiated with or without an earlier claim having been made.

The affected entity can attempt to reach a settlement with the claimant. If the case does go to court, the proper jurisdiction is the circuit court in the county where the act or omission took place. The government's defense is to be conducted through the Attorney General's Office.

Liability Limits

The limit for losses arising from a single occurrence is \$500,000. No punitive damages are allowed.

The proposed legislation would also amend the public hospital liability laws, by setting the following limits: no person could recover more than \$250,000, and the total amount recovered from a claim cannot be greater than \$500,000. Once again, there would be no punitive damages.

Liability Insurance

Governments could buy insurance against liability suits. These policies could be bought from private carriers; established through a self-insurance program; or obtained through pooled self-insurability funds established by several political subdivisions. The Budget and Control Board is also authorized to purchase liability insurance, but is not liable for any uncovered or unfunded risks for agencies or political subdivisions.

Opposition?

While the Supreme Court has focused on the inequities of an individual having to absorb a loss merely by virtue of the accidental feature of a public entity having caused the loss as opposed to a private one, concern over appropriate limitations on liability have been expressed. In an editorial April 25, the *Charleston News and Courier* worried that "nobody has as deep a pocket as government." Warning that government could "always turn to the taxpayers to pay claims," and citing "resentment among the governed" as a further inducement to bring suit, the editorial expressed the opinion that "the justification for sovereign immunity would be at least as good now as it was when there was a whole lot less government and a whole lot less money to play around with."

One reason given for the legislation introduced is to ensure that legitimate claims are respected, without undue damage to the fiscal integrity of the state's governments.

Conclusion

The doctrine of sovereign immunity, as established by the English court case, has been in existence for almost two hundred years. It has been a legal and financial protection for governments and their agents, allowing them to escape liabilities which fall upon individuals and private concerns. Now that the doctrine has been abolished in South Carolina, the State will be faced with dealing with possible suits and their consequences.

Statehouse Sportsbeat

By Red "Riceland" Rice

Two Words That Say It All

When it was all over but the shouting I turned to the sports fan beside me. "What do you think?" I asked, eager to know the public pulse.

"We won," he said, with that simple eloquence that always brings a lump to my throat. And he was right. Once again the slugging solons of South Carolina had dribbled their way to victory. The coveted trophy was where it should be: here in Columbia.

They Came To Play

It was a triumph of astute coaching and close team play, a 45-32 victory that was won not by any single standout star, but by a disciplined team that hung together, displayed outstanding ball handling, and kept up the pressure on the tarheel terrors.

The game began slowly, with the Raleigh rowdies drawing first blood. But while the palmetto paladins were slow to score, their exceptional skill in passing proved a portent of things to come. Throughout the night it was the local heroes who kept control of the ball and controlled the game. Early on, though, they were cold at the net. And then--enter Wilkins.

Wilkins, the battling barrister from Greenville, charged onto the court with a writ of habeas spherus and quickly reeled off four consecutive points. It put S.C. ahead 10-6 and broke the back of the N.C. attack. Afterwards a man who should know looked back on Wilkins' efforts and put it this way: "He saved the game for us that first quarter." That man was Coach Phillips.

Roundball--South Carolina Style

Big man under the boards--doesn't every great basketball team have at least one? The palmetto boys could count on two: Sterling Anderson and Tee Ferguson. Both consistently pulled down the key rebounds and fired off the hot passes for the S.C. down court blitz. The visitors swirled around Sterling like hunting dogs around a bear, but he shook them off and played on. The hometeam House hoopers made the nets swish and the crowds roar as they took a 15-11 lead at halftime.

Diehard Desperadoes Defy Destiny

The N.C. netters knew no words for defeat, and 'quit' was not in their lexicon, nor 'give up' an entry in their dictionary. They opened the second half with a rapid volley of field goals and foul shots to move ahead, 15-16. But soon they might ask—"Wither is fled the visionary gleam? Where is it now, the glory and the dream?"

Mowed down by the likes of David "Shotgun" Beasley and Tom Moore, the renegade senator--that's what happened to the brief and visionary dream of a tarheel victory. Their lead was erased by a home team that was persistent, dogged, intrepid, indefatigable, unquenchable--but fiscally responsible.

The tarheel troopers tried tremendously--you have to give them credit for that. They put together six unanswered points during the third quarter, and had the balance of power teetering at 26-24.

Game-Winning Strategy From High Command

Life's little ironies: Jim Mattos and Lewis Phillips coached the S.C. team. It's a job they know well, having been outstanding basketball coaches in upstate South Carolina for years. Outstanding--and long time rivals. Now they were united in piloting the defending champs. The first three quarters showed that Mattos and Phillips had transformed a motley crew of legislators into a respectable basketball team; the last quarter demonstrated consummate roundball artistry. Good coaching makes all the difference, and don't let them tell you any different.

Coaches-in-chief Mattos and Phillips ordered their troops into an all-out blitz for the final quarter. It was a daring strategy, asking for this last ounce of effort from a team fatigued by weeks of combat on the budget and blue laws. Did they have it in them? Could they drive on to final victory?

They had it, and they did: 45-32.

Ruminations of an Old Sports Fan

After the game I was sitting in Sudsy's, a quiet little establishment dedicated to calm reflection and thoughtful discussion of the larger issues of our times. Some of the savvy roundball cognoscenti were talking about the game. Some said the success should be attributed to shrewd coaching; others argued for close team play; and some speculated about a possible basketball dynasty for the palmetto players.

But I think an unknown commentator sitting next to me summed it up best. "We won," he said. And he was right.

This is Red "Riceland" Rice with Statehouse Sportsbeat.