



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

April 26, 1988

The Honorable Ronald R. Potesta, Director
West Virginia Department of Natural Resources
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Potesta:

This office is in receipt of your letter of March 25, 1988 in which you requested an opinion on the following questions pertaining to W. Va. Code § 55-7C-1 et seq. and Executive Order No. 5-87:

"Are the members of the State Emergency Response Commission and the Local Emergency Planning Committees covered under the above-referenced law? And, secondly, what are the limits or scope of the immunity from civil liability?"

As you state in your letter, the State Emergency Response Commission ("Commission") was established by Governor Moore pursuant to Executive Order No. 5-87 which implemented the federal Emergency Planning and community Right-to-Know Act of 1987 in West Virginia. The federal act required the states to establish emergency planning and notification requirements to protect the public health in the event of a release of hazardous substances in local communities. The Executive Order, dated April 15, 1987, created the Commission and provides that its members shall serve without compensation. The Order also authorizes the Commission to establish local emergency planning Committees.

Code 55-7C-1 et seq. clearly provides limited immunity from civil liability for qualified directors performing managerial functions on behalf of certain volunteer organizations. Where the language of the statute is clear and unambiguous, there is no reason to resort to construction or rules of interpretation. Kinsey v. Kinsey, 143 W. Va. 574, 103 S.E.2d 409 (1958); Simpkins v. Harvey, ___ W. Va. ___, 305 S.E.2d 268 (1983).

Qualified director is defined in Code 55-7C-2(3) as

...an individual who serves without compensation for personal services as an officer, member or director of a board, commission, committee, agency or other nonprofit organization which is a volunteer organization or entity...

"Volunteer organization or entity" is defined in the act to include the state or any political subdivision and nonprofit corporations or organizations which provide or promote public safety services. Code 55-7C-2(4).

Your first question, whether members of the Commission and the Local Emergency Planning committees are covered under code 55-7C-1 et seq., should be answered in the affirmative. Such members meet the definition in the Act of a qualified director as they serve without compensation as members of a state commission or a nonprofit organization.

Secondly, you inquired about the scope of the immunity from civil liability. Code 55-7C-3 provides as follows:

Notwithstanding any other provision of this code, a qualified director shall not be held personally liable for negligence, either through act or omission, or whether actual or imputed, in the performance of managerial functions performed on behalf of a volunteer organization or entity.

"Managerial function" is defined in Code 55-7-C-2(1) as

the act or acts of a qualified director, whereby such qualified director, through direction, regulation or administration, exercises government, control or superintendence of the affairs of a volunteer organization or entity.

Ministerial acts and those involving the exercise of discretion and judgment, are specifically included within the definition of managerial function. However, those acts involving the physical or manual handling or use of tangible property or the direct guidance or supervision of persons are not covered under the above referenced statute.

Code 55-7C-3 goes on to provide that qualified directors are not exempted from liability if he or she is found to be grossly negligent in the performance of duties. Nor is a volunteer organization relieved from imputed liability for the negligent acts of a qualified director committed within the scope of the director's duties. Furthermore, immunity is not granted to persons causing injury or damage to other persons through his or her operation of a motor vehicle.

Based on the foregoing, it is the opinion of this office that:

1. Members of the State Emergency Response Commission and the Local Emergency Planning Committees established pursuant to Executive Order No. 5-87 are qualified directors as defined pursuant to Code 55-7C-1, et seq.

2. Code 55-7C-1 et seq. exempts such qualified directors from liability for negligence in the performance of managerial functions performed on behalf of a volunteer organization or entity.

3. Exemption from liability pursuant to Code 55-7C-1 et seq. is not provided:

(a) when a qualified director is found to be grossly negligent;

(b) if a person causes any injury or damage to another person through the operation of a motor vehicle; and

(c) for acts involving the physical or manual handling or use of tangible property or the direct guidance or supervision of persons.

Very truly yours,

CHARLES G. BROWN
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By:

BRENDA HILL COLE

Deputy