

7350 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 6, 2002

The Honorable André Bauer
Senator, District No. 18
Post Office Box 142
Columbia, South Carolina 29202

Re: Your Letter of April 5, 2002

Dear Senator Bauer:

In your above-referenced letter, you asked that this Office review a request for an opinion received from one of your constituents. In a letter dated March 1, 2002, Mr. Boyce H. Crow asked that you "... render an opinion as to whether a state agency (SCGS) can and should be allowed to compete with the private sector ..." By way of background, Mr. Crow indicates that:

[The situation involves] the S.C. Geodetic Survey [SCGS] office. Richland County along with other counties in this state has begun requiring that certain pieces of real property be referenced to the S.C. State Plane Coordinate system. This greatly improves keeping track of utilities, zoning, growth and other aspects of development. The actual fieldwork involves using a GPS to monument and references this development to a county (or state) grid system. In an ideal situation, a client would hire Survey & Mapping Services to establish survey control at his site. This would be accomplished using our in-house system. Establishing one or two points is not a high profit job, but it does help pay the bills. Recently, SCGS has let it be known that they will establish this control at no cost to the client. As I understand it, the county (in this case, Richland) will contact SCGS and request that survey control be established at a particular location. This can be seen as a saving to the public, however I could provide this service at a fair cost and continue to recover the cost of my investment. I am not alone in this line of work(GPS); several other firms in this area also provide this service.

I see no reason why I/we should pay state and federal taxes to support a competitor. It seems to me that 1) better use could be found for this tax-supported office, 2) we are being forced to compete with state government and 3) as technology advances,

Request Letter

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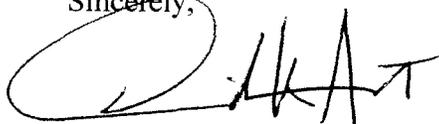
it might get worse. Should we just sit back and allow a tax-supported agency to take our work?

I have been able to locate no Constitutional or statutory provision which prohibits a governmental entity from providing goods and services which duplicate offerings from the private sector. In fact, in a prior opinion, this Office concluded that a local governmental entity, the Pee Dee Regional Transportation Authority, was not prohibited under State law from providing limousine and baggage service for airport passengers and airlines in competition with private carriers. See OP. ATTY. GEN. Dated July 12, 1985. Accordingly, it appears that a state agency such as SCGS "can" offer the services described by Mr. Crow.

Whether SCGS "should" offer these services is a policy question which this Office cannot answer. Either the agency itself or the General Assembly would have to address such a policy issue. It is apparent that other states have regulated or attempted to regulate this type competition through legislation. For example, North Carolina has apparently enacted the "Umstead Act" which "generally prohibits the State of North Carolina or any agency thereof from rendering services or selling goods ordinarily and customarily rendered by private enterprise." See N.C. OP. ATTY. GEN. Dated January 8, 2002.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'DKA', with a large, stylized flourish on the left side.

David K. Avant
Assistant Attorney General

DKA/an