

The State of South Carolina



Office of the Attorney General

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January 6, 1987

Richard J. Campbell
Division of General Services
Budget & Control Board
300 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Campbell:

You have asked for the opinion of this Office as to whether the functions of the Committee appointed pursuant to Section 14-3-820 of the Code of Laws of South Carolina (1976) would fall within the scope of the South Carolina Consolidated Procurement Code, Section 11-35-10 et seq., supra. We advise that the functions of the Committee are outside the scope of the Procurement Code.

Section 14-3-820 of the Code provides the following:

The Speaker of the House of Representatives, the President of the Senate and the Chief Justice of the Supreme Court shall appoint a committee of four, composed of two members of the House of Representatives to be appointed by the Speaker, one member of the Senate to be appointed by the President of the Senate and one member of the Supreme Court to be appointed by the Chief Justice, which shall contract for five years at a time for the prompt editing, publishing and distribution of the opinions of the Supreme Court and bound volumes thereof.

At the outset it is clear that the Committee is not entering into a contract for the expenditure of funds by the State. Rather, it is carrying out the constitutional mandate that "[t]he General Assembly shall provide for the publication of the decisions of the Supreme Court." Article V, Section 21, South Carolina Constitution. The Committee itself makes no expenditures; the Committee only selects a publisher. Section 14-3-820, supra. Therefore, the threshold requirement of the Procurement Code is

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not met insofar as the statutory function of the Committee does not involve the "expenditure of funds by this State acting under contract." Section 11-35-40(2), supra. Any expenditures are made not by the Committee but by third parties who buy published volumes. Our information is that purchase would be made by both private parties as well as by entities of State government.

An argument may be made that since some purchases of the bound volumes would ultimately be made by entities of State government that the provisions of the Procurement Code should thereby apply. However, the Procurement Code expressly exempts the procurement of "published books" from the purchasing procedures of the Code. Section 11-35-710(k), supra. Therefore, the statutory functions of the Committee fall outside the scope of the Procurement Code.^{1/}

There is yet another compelling reason why the Procurement Code is inapplicable. This Committee, consisting of a Justice of the Supreme Court and three members of the General Assembly, is charged with the general duty to provide "for the prompt editing, publishing and distribution of the opinions of the Supreme Court... ." Insofar as the Committee is tasked to exercise discretionary powers in carrying out its duty, its functions may not be delegated to others absent statutory authority. Nelms v. Civil Service Commission, 220 N.W.2d 300 (Minn. 1974); Steele v. Gray, 219 N.W.2d 312 (Wisc. 1974); 63A Am. Jur. 2d Public Officers and Employees §301. If the Procurement Code were applicable to the functions of this Committee, the ultimate authority in the matter would, by operation of the Procurement Code itself, thereby be "vested in the Division of General Services." Section 11-35-510, supra. However, it seems apparent that the General Assembly has, by specific statute, given the ultimate responsibility in this matter to the Committee. Therefore it is further apparent that the Procurement Code could not be applicable because the Committee may not delegate its responsibilities in the matter to the Division of General Services or to any other person or entity, absent statutory authority. Nelms, supra; Steele, supra.

^{1/}It must be noted that these bound volumes of the official Supreme Court decisions are unique and that equally unique statutory duties of the Committee are involved herein; too, a specific statutory exemption for published books has been provided by the General Assembly. This opinion must therefore be distinguished from Opinion No. 84-8, dated January 24, 1984, which did not address any specific statutory exemptions from the Procurement Code.

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For all of these reasons we would advise that the functions of the Committee are outside the scope of the Procurement Code. Please advise if you desire additional assistance in this matter.

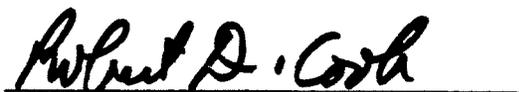
Sincerely,



David C. Eckstrom
Assistant Attorney General

DCE/rhm

REVIEWED AND APPROVED BY:



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