

1976 S.C. Op. Atty. Gen. 215 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4377, 1976 WL 22996

Office of the Attorney General

State of South Carolina

Opinion No. 4377

June 22, 1976

**\*1** The contract between two parties discharges prior contracts relating to the same subject matter between the same parties only to the extent that said contract proscribes new terms and conditions. The terms and conditions in the original contracts which are not modified in the new contract remain in force and unchanged.

TO: Charles E. Lee

Director

Department of Archives and History

QUESTIONS INVOLVED:

1. What is the effect of the contractual agreement regarding publication of The Journal of the Commons House of Assembly, November 14, 1751—October 7, 1752 proposed to be entered into between the University of South Carolina Press and the South Carolina Department of Archives and History on the two existing publishing contracts between the two parties?
2. Should the proposed contractual agreement contain a clause allowing termination of the contract in the event the parties cannot reach agreement as to the specifications for publication?

AUTHORITY INVOLVED:

L. P. Simpson, Law of Contracts (2d ed. 1965)

DISCUSSION:

In 1969 the South Carolina Department of Archives and History entered into a Memorandum of Agreement with the University of South Carolina Press which provided inter alia that the University Press would republish and sell certain books given to it by the Department of Archives and History with the Department getting a certain percentage of the net income derived therefrom. Then, in 1973 these same parties signed another agreement which provided, inter alia, that the University Press would continue to publish and sell certain book editions for the Department, that certain responsibilities would be met by the two parties and that the agreement which the parties propose to enter into reads in pertinent part: This Agreement is the sole and complete agreement by and between the parties dealing with the publication of the Work [The Journal of the Commons House of Assembly, November 14, 1751—October 7, 1752] and all prior contracts and agreements by and between the parties for the publication of said Work are hereby terminated and void.

It is a well recognized principal of contract law that any contract, such as the 1969 and 1973 contracts, may be discharged by the substitution of a new contract. L. P. Simpson, Law of Contracts, § 206 at 415 (2d ed. 1965).

A contract may be thus discharged either by the making of an entirely new and independent contract relating to the same subject or merely by the introduction of new terms. In the latter case, the new contract consists of the new terms and so much of the original contract as remains unchanged. Law of Contracts, *supra* at 416.

Therefore, it is the opinion of this office that proposed contract supersedes the two existing contracts insofar as the earlier contracts deal with The Journal of the Commons House of Assembly, November 14, 1751–October 7, 1952. The other provisions of the earlier contracts remain in force.

\*2 Another provision of the proposed contract states that the University Press will have the Work published ‘in accordance with the specifications agreed upon by the parties, . . .’ The question is what happens if the parties are unable to agree upon the specifications. The safest and easiest way to deal with this potential problem is to have a provision in the agreement allowing termination of the contract in the event agreement as to the specifications cannot be reached.

CONCLUSION:

The contract proposed to be entered into between the Department and the University Press for the publishing and sale of The Journal of Commons House of Assembly, November 14, 1751–October 7, 1752 would supersede the two existing contracts between the parties only as to The Journal. The proposed contract, if signed, would be the only contract governing the publishing and selling of The Journal.

Furthermore, in order to forestall any potential problems, the contract should have a provision allowing termination of the contract in the event agreement as to the specifications cannot be reached.

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