

1972 WL 25342 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1972

*1 Dr. B. L. Baker
Secretary
S. C. State Board of Engineering Examiners
710 Palmetto State Life Bldg.
Columbia, South Carolina 29201

Dear Dr. Baker:

You have requested that this office render an opinion as to whether the State Board of Engineering Examiners could include in its Rules and Regulations, the Rules for professional Conduct as proposed by the NSPE, such rules having the force and effect of law.

Initially this question appears to be easily answerable based upon Section 56-711 of the Code of Laws of South Carolina, 1962, which grants the Board the power to adopt rules of procedure, however, as in all such instances where the answer is too easy, research indicated several problems which must be taken into consideration.

The established law in this State is to the clear effect that an administrative agency may be vested with rule making power for the purpose of carrying out the legislative will as expressed in statutory form. [Lee v. Michigan Millers Mutual Insurance Co.](#), 250 S.C. 462, 158, S.E.2d 774. The State Board of Engineering Examiners has been vested with such rule making power, Section 56-711 ([supra.](#)) and can use such power to fill up the details insuring the complete operation and enforcement of the law. [Heywood v. South Carolina Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15. Such rule making power may thus be used to support and implement the law but cannot conflict therewith. There appears to be no conflict with the applicable State law by adopting the proposed NSPE Rules for Professional Conduct, with the exception of that provision found in paragraph 5, subsection B. Subsection B pertains to competitive bidding, forbidding the practice, thus raising a problem of some magnitude, as has been recognized in Federal cases, which allege that such practice constitutes restraint of trade in violation of the Sherman Anti-Trust Act. [United States v. Socony Vacuum Oil Co., Inc., et al.](#), 310 U.S. 150.

The State of South Carolina has enacted a statute, Section 66-51, making unlawful all arrangements, contracts, agreements, trusts or combinations . . . (c) between two or more persons as individuals, firms, corporations, syndicates or associations that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premium or prices in any branch of trade, business or commerce.

The constitutionality of the above statute has been upheld by the courts, [State v. Virginia Carolina Chemical Co.](#), 71 S.C. 544, 51 S.E. 455, and would, absent higher authority, govern the situation at hand. As can be seen, this statute is quite broad, and its coverage is limited only by the interpretation placed upon it by the courts. As the Supreme Court of this State has apparently not rendered any decision on the precise question posed, it becomes necessary to look to the other jurisdictions for authority upon which this office can base its opinion. Most cases of this nature having arisen in the Federal judiciary, it is that established train of thought which, under the rule of common law, would be highly influential upon the courts of this State.

*2 The Sherman Anti-Trust Act, upon which our State statute, Sections 66-51, et seq. ([supra.](#)) is based, makes illegal price fixing, group boycotts and tying arrangements, [U.S. v. Masonite Corp.](#) 62 S. Ct. 1070, 316 U.S. 265, 86 L. Ed. 1461, and is designed to promote full and fair competition. [U.S. v. Line Material Co.](#), 68 S. Ct. 550, 333 U.S. 287, 92 L. Ed. 701. If it be

conceded that the practice of competitive bidding stimulates competition, the question must be raised as to whether the denial of this practice restricts competition as to be violative of the State and Federal laws.

Based on the existing state of the law, it is the opinion of this office that the proposed NSPE rule, paragraph 5, subsection B, pertaining to the disallowance of competitive bidding practices, is subject to being incorporated by the State Board of Engineering Examiners as a valid regulation. This opinion must be considered as reflecting the present state of the law only, and is, of course, contingent upon further judicial developments in this area.

I trust this has been sufficient to answer the question which you posed. If we can be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Assistant Attorney General

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