

1972 WL 25325 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1972

***1 Re: Telegram of May 3, 1972 Contractors Licensing Board of South Carolina—No. 39**

Mr. Robert B. Russell
Ruscon Construction Company
149 East Bay Street
Charleston, South Carolina

Dear Mr. Russell:

In your telegram of May 3, 1972, you requested an opinion of this office as to whether or not 'contractors licensed as mechanical contractors and having a bidders' license may bid this project [Central Energy Facility as the College of Charleston, Charleston, South Carolina] as a prime contractor'.

The first rule of construction in the interpretation of statutes is that of intention on the part of the legislature and where the terms of a statute are clear and not ambiguous, there is no room for construction . . . Further, a statutory provision should be given a reasonable and practical construction which is consistent with the policy expressed therein.

Section 56-401(1) defines general contractor in relevant parts as follows:

A 'general contractor' shall be one who for a fixed price, commission, fee or wage undertakes or offers to undertake the construction or superintending of construction of any building . . . structure, or part thereof, when the cost of such undertaking is \$30,000 or more.

Section 56-401(2) defines mechanical contractor in relevant parts as follows:

A 'mechanical contractor' shall be one who for a fixed price, commission, fee or wage undertakes or offers to undertake any plumbing, heating, air-conditioning, or electrical work when the cost of the undertaking is \$10,000 or more.

The Rules and By-Laws of the S. C. Licensing Board Contractors adopted pursuant to Section 56-454 of the Code of Laws of South Carolina designate under Section 7 four classifications of construction for general contractor licensing purposes. These classifications are: (1) highway contractor; (2) building contractor; (3) public utility contractor; and (4) specialty contractor. Section 8 of the above mentioned Rules and By-Laws designates four fundamental classifications of mechanical contractors, namely: (1) plumbing; (2) heating; (3) air-conditioning; and (4) electrical.

Nothing contained in Section 56-401, et. seq., of the Rules and By-Laws of the S. C. Licensing Board of Contractors indicates that a licensed mechanical contractor can perform or undertake to perform any work outside of the four classifications contained in Section 56-401(2) which include plumbing, heating, air-conditioning or electrical work.

The fact that a licensed mechanical contractor also holds a bidders' license as a prime contractor under § 56-418 of the South Carolina Code would not allow the mechanical contractor to undertake construction or superintending of construction which falls within the sole province of licensed general contractors as contained in Section 56-401(1) of the South Carolina Code.

Inasmuch as Section 56-401(1) is plain and unambiguous on its face, it is clear that the legislative intent of that section is to require that anyone who 'undertakes or offers to undertake the construction or superintending of construction of any building . . . structure or part thereof' hold a general contractors' license.

*2 We are informed that the Central Energy Facility to be constructed at the College of Charleston will include the erection of a physical structure as well as the installation of various mechanical equipment. Since neither the applicable sections of the South Carolina Code nor the Rules and By-Laws give a licensed mechanical contractor the right to erect a physical structure or superintend the erection under that license, it is the opinion of this office that only a licensed general contractor may bid on the Control Energy Facility at Charleston, South Carolina.

The amendment to Section 10-(a)3 to the rules and regulations of the South Carolina Licensing Board of Contractors promulgated pursuant to Section 56-404, relating to mechanical contractors bidding as prime contractors and approved by the Board on May 2, 1972, appears to be in conflict with Section 56-401, et. seq., of the Code of Laws of South Carolina and would thus be invalid.

Sincerely,

Ellison D. Smith, IV
Assistant Attorney General

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