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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

August 11, 1994

Mr. Philip S. Porter
Acting Administrator and
Consumer Advocate
SC Department of Consumer Affairs
P. O. Box 5757
Columbia, SC 29250-5757

Re: South Carolina Reinsurance Facility -- Central Processor

Dear Mr. Porter:

You have requested an opinion whether certain aspects of Act No. 186 of 1993 apply to the central processing aspect of the Reinsurance Facility's business. The pertinent parts of this Act provide as follows:

[T]he Chief Insurance Commissioner is directed and required to issue an invitation for bids for any and all services which are currently paid by, or provided to, the South Carolina Reinsurance facility by designated carriers, nonprofit service association[s] of insurance companies, or other company * * * . The facility business to be bid under this section must be split into not less than three blocks of business to be awarded to not less than three different providers

Your first question is whether the competitive bidding aspect of this provision should apply to the contract with Automobile Insurance Plans Services Organization (AIPSO) for central processing services. These services include processing and assessment of claims, determination of carriers' ratable loss quotas, and maintenance of a database to perform these functions.

request letter

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This question arises because AIPSO is a nonprofit organization supported by insurance companies nationwide, and thus is under no compulsion to show a profit. In addition, AIPSO has developed a database of Facility information which it uses to perform its services, and which a newcomer could duplicate only at considerable cost. The net result is that in all likelihood, AIPSO could far underbid anyone else if this matter were put out for public bids. In fact, you indicate that the Facility believes that if this contract were put out for bids, AIPSO could bid a higher price than the existing contract and still not have to worry about being outbid. You have attached a recent letter from Senator Saleeby, Chairman of the Joint Insurance Study Committee and author of Act No. 186 of 1993, indicating his belief that the Act did not intend for the central processing facility to be covered by the competitive bidding requirement.

While we have no reason to doubt the correctness of Senator Saleeby's statement, the language of the statute compels the result that the central processing contract must be subjected to competitive bidding. The statute requires competitive bidding for "any and all services" provided to the Facility (with exceptions not here relevant). Moreover, it specifically mentions "nonprofit service associations of insurance companies." Taking these two provisions together, or even either one of them singly, the language simply leaves no room for exempting the central processing function from competitive bidding. One escape from this conclusion is in the language of the contract with AIPSO, allowing the contract to continue until January 1, 1996. This would appear to allow time to amend the Act to reflect the true intent of the General Assembly. In addition, of course, the Facility could set limits on what it would be willing to pay if the matter were competitively bid.

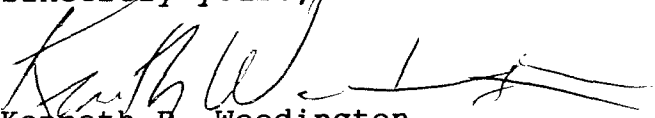
Your second question is whether the central processing function must be divided into three parts. In this instance, unlike the issue above, we believe that the literal application would work not only an inconvenience, but an actual absurdity. It is, of course, well settled that when the literal application of a statute would work an absurdity, such an application should not be used.

As you note, the requirement that the contract be divided three ways makes no sense when applied to the function of central processing, the very concept of which implies a centralized processor of a unified database. You also note that "[i]t would be next to impossible to have three separate companies act as central processors." Since it appears that the literal application of the statute would lead to an absurd result if it required splitting up what should be a centralized function, it is the opinion of this

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Office that that requirement does not apply to the central processing function.

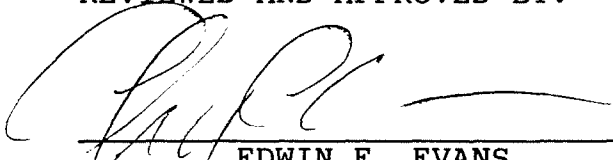
Sincerely yours,



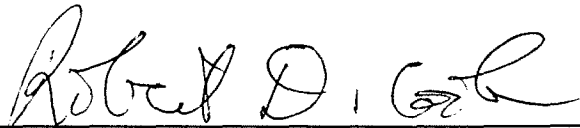
Kenneth P. Woodington
Senior Assistant Attorney General

KPW/rho

REVIEWED AND APPROVED BY:



EDWIN E. EVANS
Chief Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions