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The State of South Carolina



Office of the Attorney General

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February 11, 1993

Joseph J. Saleeby
Director, South Carolina Aeronautics Commission
Post Office Box 280068
Columbia, South Carolina 29228-0068

Dear Mr. *Joe* Saleeby:

By your letter dated November 4, 1992, to Attorney General Medlock you explained:

the South Carolina Aeronautics Commission (SCAC) has contracted with the National Association of State Aviation Officials/Center for Research and Education (NASAO/CARE), a non-profit organization, to perform information gathering inspections on a reimbursable cost basis. Now private for profit firms are being allowed to bid on providing the central contracting/information gathering function. Thus, the Federal Aviation Administration will be contracting a private firm to subcontract state aeronautical agencies to perform inspections on a reimbursable basis.

You then request "an opinion as to the legality of our agency continuing to perform these inspections if a private for profit organization wins the contract."

Axiomatically, administrative agencies, as creatures of statutes, possess only those powers expressly conferred or necessarily implied for them to effectively fulfill the duties with which they are charged. Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, ___ S.C. ___, 413 S.E.2d 13 (1991). Upon my review of The Uniform State Aeronautical Regulatory Act, S.C. Code Ann. §§55-5-10 through 55-5-290 (1976 & Supp. 1992), I do not find any express mention of the power of SCAC relative to contracts. Section 55-5-40 states, in relevant part, that "[a]ll

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of the duties and powers devolved by law upon the former Aeronautics Commission are hereby devolved upon the South Carolina Aeronautics Commission herein created."¹ In addition, §55-5-70 enumerates the duties and powers of SCAC.

"As a general rule, an administrative body has authority to enter into contracts in the exercise of its business or proprietary powers. . . ." 73 C.J.S. Public Administrative Law & Procedure §70. "[I]n the exercise of its business or proprietary powers, such an agency may contract as does a private corporation or as do individuals, unless it is otherwise restrained. [Footnote omitted.]" Id. Consequently, SCAC would appear to have the authority to enter into contracts such as the one you describe, in the exercise of its business or proprietary powers, unless SCAC is otherwise restrained. While I am unaware of any blanket prohibition of SCAC entering into contracts with private for-profit firms such as you describe, SCAC obviously should only contract to perform information gathering inspections which are related to the fostering of air commerce and other duties and powers of SCAC as prescribed by The Uniform State Aeronautical Regulatory Act.

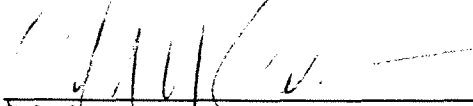
If you require any additional information concerning this matter, please advise me.

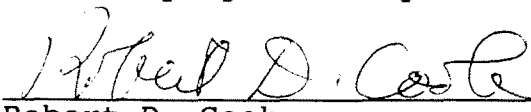
Sincerely,


Charles W. Gambrell, Jr.
Deputy Attorney General

CWG/fg

REVIEWED AND APPROVED BY:


Edwin E. Evans
Chief Deputy Attorney General


Robert D. Cook
Executive Assistant for Opinions

¹ My review of the legislation which preceded The Uniform State Aeronautical Regulatory Act did not reveal any reference to the power of the South Carolina Aeronautics Commission to contract. See S.C. Code Ann. §§2-51 through 2-77 (1962), 2-51 through 2-77 (1952), §§7112 through 7112-25 (1942) and Act No. 317, 1935 S.C. Acts 447-56.