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# The State of South Carolina



## Office of the Attorney General

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November 6, 1991

The Honorable Hugh K. Leatherman, Sr.  
Senator, District No. 31  
P. O. Box 5506  
Florence, South Carolina 29502

Dear Senator Leatherman:

In a letter to this Office you questioned whether the Department of Corrections is required to have a general contractor's license if the Department builds a ninety-six bed work camp at a cost of approximately \$500,000 to the counties. You indicated that the Department would not receive any commission, fee or wage for providing the service and the only reimbursement would be for labor and materials. Reference was made to the provisions of Section 40-11-10 of the Code which states

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, highway, sewer, grading, improvement, reimprovement, structure or part thereof when the cost of the undertaking is thirty thousand dollars or more. Anyone who engages or offers to engage in such undertaking in this State shall be deemed to have engaged in the business of general contracting in this State.

Enclosed is a copy of previous correspondence from this Office to the General Counsel for the State Department of Corrections which dealt with this same issue. The letter states in part that the Licensing Board of Contractors

... claims no express statutory authority to license state governmental entities. A thorough analysis of the applicable law and Regs. provides no specific

The Honorable Hugh K. Leatherman, Sr.

Page 2

November 6, 1991

authority; however, neither can there be found any specific exemption of such entities from the licensure requirements. Given the financial requirements of the project and the absence of an owner-builder exemption, the Board simply feels that someone directing and supervising the project should be a licensed general contractor, i.e. the project is not owned by the Department; the cost is over \$30,000; and prison guards, custodians and other members of the general public will have access to the facility....

The letter further cites Section 24-3-130 of the Code which authorizes the use of inmate labor on public projects. The statute provides that while counties may make application to the Board of Corrections for inmate labor on a project

... the direction of the work performed on the ... public improvement project must be under the control and supervision of the person designated by the ... county ... responsible for the work ....

The letter states that depending on the scope of the county project, the referenced individual "may need to be licensed by the Board." Clarification was requested from the General Counsel as to whether in his opinion Section 24-3-130 provides authority to the Department of Corrections to "construct" projects or merely to "provide labor" for such projects.

In a letter dated April 26, 1991 the Executive Director for the Licensing Board for Contractors stated

... since the Department of Corrections is to receive a wage, fee, or commission for their services, and since this project is not owned by the South Carolina Department of Corrections, a General Contractor's License would be required if the cost of the undertaking exceeds \$30,000.00.

This Office in prior opinions has repeatedly indicated that the interpretation of a statute by the agency charged with administering it is entitled to great weight and should not

The Honorable Hugh K. Leatherman, Sr.

Page 3

November 6, 1991

be overturned without clear and cogent reasons. See: Ops. of the Atty. Gen. dated September 25, 1991, March 27, 1991 and March 24, 1989. See also: Dunton v. S.C. Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986).

Therefore, it appears that statutory provisions pertaining to licensure of general contractors do not expressly provide for licensing of state agencies. However, a strong public policy argument may exist for requiring that the individual designated by a county to control and supervise the work of inmate labor be licensed as a general contractor. As a result, the various parties involved in this instance may wish to consider such a requirement. Again, Section 24-3-130 does not expressly authorize the Department of Corrections to construct a particular facility; instead, such provision provides that that Department "may permit the use of prison inmate labor" on such a project.

Moreover, as noted, the Licensing Board for Contractors has apparently interpreted the relevant law as requiring that the Department of Corrections obtain a general contractor's license in this instance. While Sections 40-11-10 et seq. are not explicit in this regard, a case could be made for the interpretation by the Board. As noted, courts typically defer to an interpretation by the agency charged with administering the statutes at issue. In this instance, pending clarification by the General Assembly, consideration could be given to seeking an interpretation by the courts of this issue.

If there are any further questions, please do not hesitate to contact me.

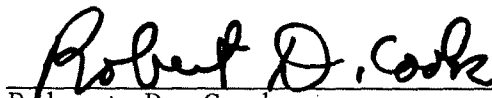
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions