

1983 WL 181797 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1983

***1 SUBJECT: Disclosure of Engineering Feasibility Report for a Proposed Integrated Microwave Communications System**

Reports prepared for and being utilized in the preparation of a Request for Proposal (RFP) to solicit proposals from vendors need not be disclosed. Section 30-4-40 of the South Carolina Freedom of Information Act, South Carolina Code of Laws (1976), as amended, exempts documents incidental to proposed contractual arrangements from mandatory disclosure to the public.

Ted Lightle
Acting Division Director
Division of General Services

DISCUSSION:

You have referred to this office a question concerning the disclosure, pursuant to request, of an Engineering Feasibility Study for a Proposed Integrated Microwave Communications System to be built for the State. The Division of General Services is presently utilizing this study in preparing a Request for Proposals (RFP). Concern is felt that vendors solicited to provide the State with long distance telecommunication services would rely on this study rather than submitting competitive proposals based on independently derived cost estimates.

QUESTION:

Is the Division of General Services required under the South Carolina Freedom of Information Act to allow prospective vendors to inspect or copy the Engineering Feasibility Report under consideration in this Opinion?

OPINION:

No. [Section 30-4-40, South Carolina Code](#) of Laws (1976), as amended, specifically states that documents incidental to proposed contractual arrangements may be exempt from disclosure under the provisions of the South Carolina Freedom of Information Act. Section 11-35-310(25) of the South Carolina Consolidated Procurement Code defines a 'Request for Proposals' (RFP) as being a solicitation for proposals which will ordinarily result in the award of a contract. Since this study has been prepared for utilization in drafting a Request for Proposals (RFP), it may be viewed as a document incidental to a proposed contractual arrangement and thus exempt from mandatory disclosure under the Freedom of Information Act.

Judith Evans Finuf
Assistant Attorney General

March 15, 1983

SUBJECT: State Arts Commission authority to receive, spend, and carry forward funds from years prior to FY:83.

The retention and carrying forward of special funds derived from gifts, contributions and grants to the South Carolina Arts Commission should be accomplished by proviso to the State Appropriations Act.

MS. SCOTT SANDERS

Executive Director

South Carolina Arts Commission

DISCUSSION:

You have referred to this office a question concerning the Commission's authority to carry forward current 'other' fund balances in the Commission's special accounts presently held in the State Treasury from fiscal years 1978, 1979, and 1980. Each year since 1967, the South Carolina Arts Commission has received a state appropriation, federal grants, and 'other' funds which consist of contributions from individuals, foundations, and corporations, fees from arts program sponsors, and revenue from ticket sales and student poetry anthologies. This 'other' income has been deposited into special accounts in the State Treasury.

QUESTION:

*2 Can the South Carolina Arts Commission receive, spend, and carry forward from year to year funds derived from bequests, contributions, program fees, rental fees, and revenue from ticket sales and student poetry anthologies?

OPINION:

You inform me that the funds in question are used to match federal grants as is required in a large number of grant proposals, those grants being contingent on matching funds furnished by the Arts Commission. You state that the project dates for federal grants or privately funded projects rarely coincide with the State's fiscal year and that it is required that the balances of both federal and 'other' fund accounts be carried forward into new fiscal years.

Each year, the Arts Commission has shown its 'carried forward' federal and local income in the Commission's annual budget request and these funds have been shown as carried forward on the State Auditor's budget request forms. Each year, the Legislature has obviously considered the 'carry over' of these funds from year to year with no question of the Commission's authority to carry these funds over to the next fiscal year being raised.

Under [Section 60-15-70, South Carolina Code](#) of Laws (1976), the South Carolina Arts Commission is authorized ' . . . to accept gifts, contributions, and bequests of an unrestricted nature from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the Commission's programs.' However, no statutory authority is granted to retain and carry forward any excess funds remaining from year to year resultant from these gifts, contributions, and bequests.

Since the Legislature has, in the past, considered these funds in review of the Commission's budget requests and, in view of the necessity for the Commission to encourage assistance from private sources through gifts, contributions, and bequests due to the reduction in funding and grants by the federal government, it is my suggestion that the Commission modify the proviso to be attached by the General Assembly to the fiscal year 1982 Appropriations Act as follows:

PROVIDED, FURTHER, 'That any income derived from Art Commission sponsored arts events and any other funds derived through gifts, contributions, and bequests now in the possession of the Commission shall be retained by the Commission and placed in special revolving accounts for the Commission to use solely for the purpose of supporting the programs provided herein and for furthering the objectives of the Commission.'

JUDITH EVANS FINUF

Assistant Attorney General

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