

1981 WL 157850 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 6, 1981

*1 The Honorable Hugh K. Leatherman, Sr.
South Carolina State Senate
Suite 510
Gressette Senate Office Building
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Leatherman:

Mr. McLeod has referred your opinion request of June 10, 1981 to me for reply. Enclosed you will find a copy of an opinion written to Representative John Gardner, which addresses the issues raised by your second and third questions.

The first question you raise concerning whether the addendum was authorized by the Standard Specifications sections 101.29 and 101.57 was not explicitly addressed in the original opinion. The opinion, however, did note that the Department was authorized by statute to contract for the proper discharge of its functions and duties and that the right of contract included the right to agree upon designated terms. Section 101.57 concerns special provisions and defines them as provisions inserted in the proposal form and contract revising or supplementing the standard specifications to cover conditions peculiar to the individual project. At the time of the adoption of this particular addendum, the Department was uncertain as to whether the new provisions would be a permanent change or a temporary one. The Department has decided to retain these new provisions as permanent additions. Authorization for such actions is found in Standard Specification 101.70 concerning supplemental specifications. This term is defined as a specification adopted subsequent to the publication of the Standard Specifications and which constitute a part thereof and of the contract. Supplemental specifications prevail over Standard Specifications when in conflict therewith. In light of the Department's decision to make these new provisions a part of every future contract, they are now taking steps to label the provisions as supplemental specifications pursuant to this section.

It is the opinion of this office that the Department had the authority to adopt these new provisions as an incident of its power to contract and pursuant to the Standard Specifications cited above. It should be noted that Standard Specification 101.73 states that the titles or headings of the sections are intended for the convenience of reference and should not be considered as having any bearing on their interpretations.

I trust that this information answers your inquiries, but if you have any further questions, please let me know.

Sincerely yours,

Richard D. Bybee
Assistant Attorney General

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