

1982 WL 189258 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1982

*1 A. C. Clarkson, Jr., CPA
Clarkson, Harden and Gantt
1611 Devonshire Drive
Post Office Box 627
Columbia, South Carolina 29202

Dear Clarkson

This will reply to your letter inquiring as to the propriety of certain payments made by Patriots Point Development Authority to the local Council of the Boy Scouts of America in Charleston.

You advise that these payments are made at the rate of one dollar (\$1.00) per boy scout who participate in the scout camping program conducted at Patriots Point, whether or not that scout is referred to the camping program by the Charleston Council; but that the fee does not apply to girl scouts who attend the camping program. You further advise that the Charleston Council answers inquiries from other Scout Councils and gives some publicity to the Patriots Point program at regional scout meetings.

The advice of this Office is that payments to the Charleston Council, just as to any other person or organization performing a service for a State agency, must be based upon the value of services performed. That is not to say a contract may not be negotiated upon a fee or commission basis, but the fee or commission must apply only to work performed or results obtained which are demonstrably produced by the contractor.

Further, any payment by an agency of public funds that might be construed as a contribution to a private individual or organization would be constitutionally prohibited. We would, therefore, suggest that, if payments are to be made to the Charleston Council (or any other Council) for promotion and support of the camping program, such should be based upon a simple contract that provides payment only for actual promotional activity and for the exact number of scouts sent to the program through the Council concerned.

I trust this is responsive to your question.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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