

1980 WL 120586 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 7, 1980

***1 Re: Competitive Bidding by Architects and Engineers**

Mr. Larry L. Hamilton
Legislative Audit Council
500 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Hamilton:

The letter of December 11, 1970, from George L. Schroeder to the Attorney General has been referred to me for an appropriate response. Mr. Schroeder requested that our response be directed to you as the supervisor for the above-referenced project. In August of 1978, this office issued an opinion to the South Carolina State Board of Architectural Examiners finding that the Board's Rule 17 violated the Sherman Anti-trust Act. Thereafter, the Board advised all of its registrants and has continued to advise new registrants that this rule will not be enforced by the Board. I am enclosing copies of our opinion and a sample of the Board's letter for your information and file. I believe the Board will drop this rule in its next revision of its rules.

Nevertheless, Rule 17 has no effect on the cost of A/E services to the State. Section 10-5-10, et seq., provides the method by which the State selects architectural and engineering firms. Basically, this statute requires the agency to advertise the project and request resumes of qualifications from interested architectural or engineering firms. Then the agency must conduct conferences with at least three of the firms submitting resumes before it selects the three firms which, in its judgment, are most qualified, ranking the three in priority order. Thereafter, the agency negotiates with the firms in the order of their ranking until a satisfactory contract is formally concluded. As a legislative enactment, Section 10-5-10 of the South Carolina Code of Laws, 1976, would be exempt from anti-trust action under the 'State action' exception. See, [Parker v. Brown, 317 U. S. 341 \(1943\)](#). Since there can be no legal challenge to this statute, the only remedy would be through an amendment to Section 10-5-10, et seq.

If you should have any additional questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

1980 WL 120586 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.