

1980 WL 121200 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 30, 1980

*1 The Honorable Rembert C. Dennis

Chairman

Senate Finance Committee

State House

Post Office Box 142

Columbia, South Carolina 29202

Dear Senator Dennis:

At your request we have examined Senate Bill No. S-674, copy attached, with reference to its possible effect upon contracts routinely made by State agencies and institutions in the performance of their statutory functions and duties.

The first problem presented is the use of the word 'contract' in line two. While we understand the intent was that the act should apply only to contracts for personal services, this is not the effect of the act. The word 'contract' is a generic term which, without expressed limitations, would make the act applicable to any contract, including leases, repair and maintenance contracts, warranty agreements and a host of other contracts which, through trade practice and in some instances by statute, customarily run for five or more years. In our opinion it would be a distinct disadvantage to the State to lose the flexibility to make such agreements. The limitation would have particular adverse effect upon leases of real estate and lease/purchase contracts on equipment of all kinds.

The second problem presented is the use of the unqualified word 'person' in line three. Again, the word 'person' is a generic term which includes individuals, partnerships, associations, corporations, trusts and any other legal entity having the power to contract. If the intent is to have the limitation apply only to individuals providing personal services, the act should so state. Of course, corporations and other legal entities may also provide personal services by contract, and the act might be made to apply expressly to 'any individual, association, corporation or other legal entity;' so as to eliminate any doubt.

It is also suggested that the words 'authorized by law to make such contracts' be inserted after the word 'institution' on line two. This would avoid the problem of an assertion that the act is intended to give additional contractual powers to agencies or institutions not having them.

Finally, as to the four-year limitation itself, this is a matter of legislative discretion and we perceive no legal problem, so long as such limitation applies only to contracts for personal services. As a matter of practice, most of such contracts are made for periods of one or two years, with options to extend, and the four-year limitation should prove beneficial in controlling those contracts, as well as contracts now being made for longer terms.

For your convenience we attach a proposed amended draft of the act. Please call upon us if you have further questions.

Sincerely,

Frank K. Sloan

Deputy Attorney General

ATTACHMENT

A BILL

To Provide that State Agencies, Departments or Institutions Shall Not Make Contracts for More than Four Years.

Be it enacted by the General Assembly of the State of South Carolina:

***2** SECTION 1. Notwithstanding any other provision of law, no state agency, department or institution shall make a contract with any person for more than four years. This act shall not apply to any contract existing on the effective date of this act but shall apply to amendments to any contract existing on the effective date of this act.

SECTION 2. This act shall take effect upon approval by the Governor.

A BILL

TO PROVIDE THAT STATE AGENCIES, DEPARTMENTS OR INSTITUTIONS SHALL NOT MAKE CONTRACTS FOR PERSONAL SERVICES FOR MORE THAN FOUR YEARS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Notwithstanding any other provisions of law, no state agency, department or institution authorized by law to make such contracts shall make a contract for personal services with any individual, partnership, association, corporation or other legal entity for more than four years. This act shall not apply to any contract existing on the effective date of this act but shall apply to amendments to any contract existing on the effective date of this act.

SECTION 2. This act shall take effect upon approval by the Governor.

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