

1980 WL 120755 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 27, 1980

***1 RE: Housing Authority letter of June 26, 1980 concerning Trustee for Multifamily Construction Loan Program**

L. Steve Mayfield
Executive Director
S.C. State Housing Authority
2221 Devine Street
Suite 540
Columbia, South Carolina 29205

Dear Steve:

You have requested the opinion of this Office on the methodology the Authority must follow in selecting a Trustee for your Multifamily Construction Loan Program. You have also requested that this opinion be in your hands prior to the Commissioners' June 30, 1980 meeting, at which time such action on the selection of a Trustee is required.

South Carolina Code § 1-1-440 (South Carolina Code of Laws Cum. Supp. 1979), which requires three qualified bids whenever a contract for in excess of Fifteen Hundred Dollars is to be made by a state agency, does not, in the opinion of this Office apply to the selection of a Trustee under the conditions outlined in your letter. Although exhaustive research on the topic was not undertaken because of the time requirements, this Office is of the opinion that a person or entity acting as a third party with fiduciary responsibility to hold, invest, and disburse proceeds of bond sales and to insure proper transactions by a state agency on behalf of bond holders of that agency, would not customarily be employed by competitive bidding. We are of this opinion notwithstanding the fact that the Authority, for reasons best known to itself, selected its previous Trustee through a process which could arguably be described as competitive bidding. It is our opinion that the Authority was under no obligation to do this when it did so and is under no obligation to receive competitive bids in the selection of your Trustee for your Multifamily Construction Loan Program.

Because your Trustee will be required to work in close harmony with the Authority and the State Treasurer, it is our further opinion that the Authority may consult with the State Treasurer in assessing the competency for the job of Trustee of any financial institution or person.

If I may be of any further help to you on this matter, please do not hesitate to call upon me.

Sincerely yours,

William P. Simpson
Assistant Attorney General

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