

1977 WL 37425 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 15, 1977

*1 Honorable Harold E. Taylor
Member
House of Representatives
Richland County
1324 Bonner Street
Columbia, South Carolina 29204

Dear Mr. Taylor:

You have requested my opinion as to whether security guard services for the Richland County Airport Commission must be obtained upon public bids.

I am reluctant to intrude into the jurisdiction and authority of the attorney for the Airport Commission, Mr. Eugene Rogers, as my invariable practice is to defer inquiries about the legal affairs of separate political subdivisions to the attorneys for such entities; however, you have insisted that I respond to you in your capacity as a Member of the House of Representatives and I feel that I am compelled to do so under the statutory duties imposed upon me. I feel that your request is appropriately made by you as a Member of the Richland County Legislative Delegation.

I do not feel that the provisions of Section 1-1-440, Code of laws, 1976, are applicable to the Airport Commission. This law requires that contracts for products or services in excess of \$1500.00 must be obtained after public bidding, but this is applicable only to State agencies and departments. In my opinion, the Airport Commission is not such an agency or department within the meaning of the cited section.

I believe that the organic act creating the Airport Commission is the basis for considering the problem. That act establishes the commission for the purpose of developing—maintaining—operating, regulating, protecting and policing airports and air navigation facilities necessary to serve the people of the district, which encompasses the Counties of Richland and Lexington. Among the specific powers and duties vested in the commission are to achieve the foregoing essential objectives under reasonable rules and regulations of the commission and to provide for the use of airport facilities, including the supplying of goods, services or facilities. Other specific powers are delineated in the act. Section 2-390.15(12) provides authority for the commission:

‘to make contracts for the construction, erection, maintenance and repair of the facilities in its charge by competitive bidding—if such contracts are in excess of \$10,000.00—.’

I believe that the primary question is whether or not the foregoing provision of law includes services, such as security guards, within its meaning.

I think that security guard services most probably comes within the terms of subsection 12, as set forth above. The security and policing of the airport are specifically vested in the commission and it clearly may undertake to furnish such services. I think also that the authority to make contracts for the maintenance of the facilities in its charge includes the furnishing of security guards. It is my understanding that such personnel are engaged in inspecting passengers and baggage in accordance with FAA requirements to protect airports and persons using the airport, as well as to protect the airport itself. This service is rendered in support, aid and carrying out of the normal operations of an airport.

*2 The legal question presented is certainly an uncertain one and arguable positions may reasonably be adopted on different views of the matter. I have considered the case of [Caldwell v. McMillan](#), 224 S.C. 150, 77 S.E.2d 798, which considered the propriety of the establishment of a cafeteria to be operated by the State Highway Department and which was upheld as a valid function of the Highway Department as being a 'proper facility' within the meaning of the act authorizing the cafeteria. The Court in this case held that the establishment of an eating place for employees in the Department building would have the effect of increasing efficiency in the handling of the State's business. This is the only case in this State of which I am aware touching upon the meaning of the word 'facility' and, in that instance, the word was not used in precisely the same manner in which 'facilities' is used in the airport enabling act. A case referred to in WORDS AND PHRASES, Vol. 16, is persuasive also.

While it is my view that the guard services are subject to the bidding requirements of subsection 12, set forth on the preceding page, I reiterate that the answer to the question is far from clear and a definitive opinion can only be expressed by a court.

Very truly yours,

Daniel R. McLeod
Attorney General

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