

1978 S.C. Op. Atty. Gen. 179 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-145, 1978 WL 22613

Office of the Attorney General

State of South Carolina

Opinion No. 78-145

July 26, 1978

**\*1 SUBJECT: Statutes, Dates, Contracts**

No criminal liability attaches under a statute declaring blind bidding for the exhibition of movies to be unlawful, where a distributor receives a blind bid in writing and accepts it orally prior to the effective date of the statute, but the bidder does not receive written acceptance of the bid until after the effective date of the statute.

TO: Donald V. Myers  
Solicitor  
Eleventh Judicial Circuit

QUESTION:

Does criminal liability attach under a statute declaring blind bidding for the exhibition of movies to be unlawful, where a distributor receives a blind bid in writing and accepts it orally prior to the effective date of the statute, but the bidder does not receive written acceptance of the bid until after the effective date of the statute?

STATUTES AND CASES:

Senate Bill 656 (Ratification No. R-617) (1978)

[Callaham v. Ridgeway](#), 138 S.C.10, 135 S.E. 646 (1926)

[Evatt v. Campbell](#), 234 S.C.1, 106 S.E.2d 447 (1959)

[Farmers' Produce Co. v. McAlester Storage & Commission Co.](#), 48 Okla. 488, 150 P. 483 (1915)

[Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231 (1975)

[Masonic Temple, Inc. v. Ebert](#), 199 S.C. 5, 18 S.E.2d 584 (1942)

[Rabon v. State Finance Corporation](#), 203 S.C. 183, 26 S.E.2d 501 (1943)

[Shealy v. Fowler](#), 182 S.C. 81, 188 S.E. 499 (1936)

Corbin, [Corbin on Contracts](#), Vol. I §§ 77, 88 (1963)

17 Am.Jur.2d [Contracts](#) § 43 (1964)

DISCUSSION:

For purposes of this opinion, the relevant facts are as follows:

On May 9, 1978, a nonresident motion picture distributor solicited bids from South Carolina exhibitors for the exhibition of a movie which had not been 'trade screened' in South Carolina prior to the solicitation of bids. Bids were submitted to the distributor on or about May 15, 1978. Written acceptances of bids were sent to exhibitors on May 27, 1978. Through oversight, one exhibitor whose bid had been accepted was not mailed an acceptance. He was, however, verbally advised on May 27 that his bid had been accepted. A written acceptance of the bid was mailed to the exhibitor on May 30 and received by him on May 31. Senate Bill 656 (Ratification No. R-617), declaring blind bidding to be unlawful, became law on May 30, 1978.

You have asked whether the exhibitor and distributor would be subject to criminal prosecution under the statute for exhibiting the film pursuant to their agreement. It is the opinion of this office that they would not.

Section 3(a) of Senate Bill 656 provides as follows:

Blind bidding is prohibited in this State. No bids shall be returnable, no negotiations for the exhibition or licensing of a motion picture shall take place and no license agreement or any of its terms shall be agreed to for the exhibition of any motion picture in this State before the motion picture has been trade screened in the State.

**\*2** The foregoing section thus proscribes three types of conduct: (1) returning bids for the exhibition of unscreened movies; (2) negotiating for the exhibition or licensing of unscreened movies; (3) making license agreements for the exhibition of unscreened movies. In the facts presented, all bids were returned to the distributor prior to the effective date of the statute. Likewise, it appears that any negotiations which may have taken place occurred prior to the effective date of the statute. The single question to be answered, therefore, is whether the distributor and the exhibitor had concluded an agreement for the exhibition of an unscreened motion picture prior to or after the effective date of the statute. If the contract was completed prior to the effective date of the statute, it was lawful. If completed after the effective date of the statute, it was not lawful.

Basic principles of contract law should dispose of the question involved. It is elementary that there can be no contract unless there is both an offer and an acceptance. [Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231 (1975); [Masonic Temple, Inc. v. Ebert](#), 199 S.C. 5, 18 S.E.2d 584 (1942). Under the facts presented, the offer to make a contract was the bid submitted by the exhibitor to the distributor. Section 2(f) of Senate Bill 656 defines 'bid' as a written or oral offer or proposal by an exhibitor to a distributor in response to an invitation to bid or otherwise stating the terms under which the exhibitor will agree to exhibit a motion picture. (emphasis added).

Acceptance of an offer need not be expressed, but instead may be inferred from acts or conduct. [Shealy v. Fowler](#), 182 S.C. 81, 188 S.E. 499 (1936). Moreover, unless the offer prescribes the mode of acceptance, the offeree may accept in any manner that is reasonable under the circumstances, Corbin, [Corbin on Contracts](#), Vol. I, §§ 77, 88 (1963); 17 Am.Jur.2d [Contracts](#) § 43 (1964); see also, eg., [Farmers' Produce Co. v. McAlester Storage & Commission Co.](#), 48 Okla. 488, 150 P. 483 (1915). Finally, a contract must be supported by valid, legal consideration. [Rabon v. State Finance Corporation](#), 203 S.C. 183, 26 S.E.2d 501 (1943). Mutual promises constitute good consideration. [Evatt v. Campbell](#), 234 S.C. 1, 106 S.E.2d 447 (1959); [Callaham v. Ridgeway](#), 138 S.C. 10, 135 S.E. 646 (1926).

In the facts presented, the offer (bid) was made on May 15, prior to the effective date of the statute. There is no indication that the written offer specified the mode by which the offer had to be accepted. Unless verbal acceptance was unreasonable under the circumstances, the distributor's verbal acceptance of the bid on May 27 was a proper acceptance. The mutual promises made by the exhibitor in his offer and the distributor in his acceptance were sufficient consideration to support the contract. Since the essential elements of the contract existed prior to the effective date of the statute, the contract was not unlawful thereunder.

CONCLUSION:

\*3 It is therefore the opinion of this office that no criminal liability would attach under Senate Bill 656 where a distributor received a blind bid and accepted it orally prior to the effective date of the statute, but the exhibitor did not receive written acceptance of the bid until after the effective date of the statute.

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