

1978 WL 34603 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 4, 1978

***1 RE: Confidentiality Required of Commissioner of Labor Under Section 41-3-350, Code of Laws of South Carolina, 1976**

The Honorable E. L. McGowan
Commissioner
Department of Labor
Post Office Box 11329
Columbia, South Carolina 29211

Dear Commissioner McGowan:

Recently you requested an Opinion from this Office concerning whether or not the Department of Labor, the Governor's Office of Energy Management and Clemson University could agree to collect certain statistical information regarding manufacturing processes within the State of South Carolina.

In particular, the Department of Labor, pursuant to Code Section 41-3-310, gathers certain statistical data from businesses and industries within South Carolina, and furnishes the information to the Governor's Office of Energy Management for use in developing programs regarding allocation of energy resources. Thereafter, the Governor's Office furnishes the statistical data to Clemson University for use in various studies in the field of energy utilization and development.

Based on the above fact situation, you have inquired as to whether or not the Governor's Office and Clemson University may be made agents of the Department of Labor as contemplated by Code Section 41-3-310, et. seq., and further whether the Department of Labor can release to the Governor's Office and Clemson University the names and locations of the employers who provide information to the Department of Labor.

In response to the first question, Code Section 41-3-340 requires every employer of labor and every person engaged in any industrial pursuit to give to the Commissioner of Labor or his, agents all necessary information to enable the Commissioner to perform the duties required of the Commissioner under the statute. It is my opinion that the meaning of the term 'or his agents' applies only to Section 41-3-340 and indicates that the Commissioner of Labor may use any appropriate agent to receive industrial information required to be provided by the statute. However, it is my understanding from your letter that the information in question is provided directly to the Department of Labor and from there it is given to the Governor's Office and Clemson University. Therefore, the Governor's Office and Clemson University are not agents within the contemplation of Section 41-3-340, in that they do not receive any information in the first instance from industrial concerns, on behalf of the Department of Labor.

Your second question involves whether or not the Department of Labor can release to the Governor's Office and Clemson University names and locations of the employers supplying information, pursuant to the statute, to the Commissioner of Labor. An examination of the language in Code Section 41-3-350 states that no use shall be made in the reports of the Commissioner of the names of individuals, firms or corporations supplying the information called for by Section 41-3-320 to 41-3-340, because such information is deemed to be confidential. Therefore, the reports required to be made to the Governor's Office and the General Assembly in Section 41-3-310 should be statistical compilations only, and should not contain individually identifiable data. Mrs. Potts in your office has advised that the data now collected

and reported to Clemson and the Governor is provided in statistical form only, and does not contain the name of the individual supplying the data. Therefore, such data distribution as is not being conducted appears to comply with the confidentiality requirement of Section 41-3-130.

*2 Since you are collecting statutorily mandated information in harmony with the statutory requirement on confidentiality, no reason appears why you could not enlist the aid of Clemson University for preparing and analyzing the statutory data. Since the information required to be collected is also required to be supplied to the Governor and the General Assembly, I see no reason why Clemson University cannot use this anonymous data to conduct studies, on energy resource utilization.

In summary, it is the Opinion of this Office that the Governor's Office and Clemson University are not agents of the Commissioner of Labor as that term is used in Code Section 41-3-340. Further, as long as the Labor Department does not release the names of individuals, firms or corporations, supplying the information called for by Sections 41-3-320 to 41-3-340, this information may be used by the Governor's Office and Clemson University for purposes of studying and analyzing the energy resource needs of the State of South Carolina.

I hope this information will be helpful to you and with kind regards, I am
Sincerely,

George C. Beighley
Assistant Attorney General

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