1976 S.C. Op. Atty. Gen. 279 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4424, 1976 WL 23041

Office of the Attorney General

State of South Carolina
Opinion No. 4424
AUGUST 12, 1976

***1** The contract between the South Carolina Department of Social Services and various community action agencies which provides for transportation services to all individuals who are eligible for medical assistance under the State Plan for Title XIX of the Social Security Act is valid but the provision providing for a depreciation allowance on vehicles used for transportation is void. All monies previously paid by the South Carolina Department of Social Services for depreciation can be recovered by that agency.

TO: Dr. R. Archie Ellis
Commissioner

QUESTION PRESENTED:

What is the status of the contract between the South Carolina Department of Social Services and various community action agencies which provides for transportation services to all individuals who are eligible for medical assistance under the State Plan for Title XIX of the Social Security Act and for a depreciation allowance?

STATUTES, CASES, ETC., INVOLVED:

45 C.F.R., Appendix C, Part 74.

Dolan v. Lifesy, 19 Ga. App. 518, 91 S.E. 913 (1917); Yeargin v. Bramblett, 115 Ga. App. 862, 156 S.C.2d 97 (1967); Dixie Appliance Co. v. Bourne, 138 W. Va. 810, 77 S.E.2d 879 (1953); Shepherd v. Richmond Engineering Co, Inc., 184 Va. 802, 36 S.E.2d 531 (1945); Willett Seed Co. v. Kickeby-Gundestrup Seed Co., 145 Ga. 559, 89 S.E. 486 (1916); Blassingame v. Greenville County, 134 S.C. 324, 132 S.E. 616 (1926); Central Ice Cream and Candy Co. v. Home Ins. Co., 171 S.C. 162, 171 S.E. 797 (1933); White v. Kelly, 85 W. Va. 366, 101 S.E. 724 (1919); Town of Bennetsville v. Bledsoe, 226 S.C. 214, 84 S.E.2d 554 (1954); Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945); U.S. v. Carr, 132 U.S. 644, 33 L.Ed. 483, 10 S.Ct. 182 (1890); Montgomery County v. Fry, 127 N.C. 258, 37 S.E. 259 (1901).

66 Am. Jur. 2d Reformation of Instruments § 22.

66 Am. Jur. 2d Restitution and Implied Contracts § 119.

66 Am. Jur. 2d Restitution and Implied Contracts § 128.

DISCUSSION:

In light of Part II(b)(11)(a), 45 C.F.R., Appendix C, Part 74, which prohibits the taking of depreciation allowance on equipment or buildings whose cost is borne directly or indirectly by the federal government, there is no question that the provision in the contract between DSS and various community action agencies allowing such depreciation is void and unenforceable.

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The question that naturally arises thereafter is whether the entire contract is affected by the finding above or whether such is applicable only to the single provision of the contract. It is the opinion of this office that only the single provision is affected.

The primary basis for this conclusion is that the contract is a severable contract. As such, each of its provisions is evaluated as to its own merit, and therefore, the invalidation of one provision does not invalidate the contract as a whole.

***2** One key consideration in determining if a contract is severable or not is whether its subject matter must be taken as a whole. If the answer is no, then it is severable. Dolan v. Lifesy, 19 Ga. App. 518, 91 S.E. 913 (1919); Yeargin v. Bramblett, 115 Ga. App. 862, 156 S.E.2d 97 (1967). As evidenced by Appendix A of the contract, the procedures for the reimbursement of transportation expenses are not interdependent or contingent upon each other but can be taken separately without involving the whole.

Another consideration in determining the severability of a contract is the intention of the parties. Dixie Appliance v. Bourne, 138 W. Va. 810, 77 S.E.2d 879 (1953); Shepherd v. Richmond Engineering, 184 Va. 802, 36 S.E.2d 531 (1945); Willett Seed Co. v. Kickeby-Gundestrup Seed Co., 145 Ga. 559, 89 S.C. 486 (1916). Again, Appendix A is indicative of the intention of the parties to provide for severability in listing the various rates of reimbursement separately rather than providing a lump sum reimbursement. Also, Article II, Section 1 and Article III, Section 1, both calling for compliance with revisions in the Federal regulations, illustrate a desire for severability. Therefore, the contract is deemed severable and the voiding of the depreciation allowance does not invalidate the contract in toto.

Consistent with the foregoing conclusion is the theory of mutual mistake, which states that where parties enter a contract under a mistaken belief, courts will allow an equitable reformation of the contract to effectuate the true intent of the parties. Blassingame v. Greenville County, 134 S.C. 324, 132 S.C. 616 (1926); Central Ice Cream & Candy Co. v. Home Ins. Co., 171 S.C. 162, 171 S.E. 797 (1933); 66 Am. Jur. 2d Reformation of Instruments § 22. Clearly, the true intent of the parties involved herein is to reimburse the community action agency for all transportation costs that are allowable while maintaining compliance with applicable Federal regulations. (See Article II, Sections 1, 5, 6, 7 and Article III, Section 1). It would follow, then, that the contract could be easily reformed to effectuate such intent by sanctioning the contract without the depreciation allowance.

The final question involved is whether DSS can recover those monies paid as depreciation allowances in violation of applicable Federal regulations. Under Article II, Section 5, such possibility exists since the parties have agreed, by contract, that the community action agency is responsible, both financially and otherwise, for compliance with all applicable Federal regulations. As compliance was not perfected the contract places the financial loss on the community action agency, not DSS. Moreover, it is a well established rule of law that when a payment is made under a cloud of mutual mistake, which payment would not have been made but for such mistake, such payment is recoverable provided such refund will not unjustly affect the payee who changed his position because of such payment. Town of Bennettsville v. Bledsoe, 226 S.C. 214, 84 S.E.2d 554 (1954); Pilot Life-Ins. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945); 66 Am. Jur. 2d Restitution and Implied Contracts § 119. Recovery is even clearer when public monies are involved, as the government is dependent on the acts of its agencies whose ignorance or unfaithfulness would seriously impair its operation. U.S. v. Carr, 132 U.S. 644 33 L.Ed. 483, 10 S.Ct. 182 (1890); Montgomery County v. Fry, 127 N.C. 258, 37 S.C. 259 (1901); 66 Am. Jur. 2d Restitution and Implied Contracts § 128

CONCLUSION:

***3** The primary contract between DSS and community action agencies which provides for transportation services to all individuals who are eligible for medical assistance under the State Plan for Title XIX of the Social Security Act is valid but the provision providing for a depreciation allowance on vehicles used for transportation is void. All monies previously paid by DSS for depreciation can be recovered by the agency, either by virtue of specific contract provisions

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or through well established legal rules. However, in the latter instance, recovery will depend upon whether an injustice will be visited upon the community action agency involved.

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