

1975 S.C. Op. Atty. Gen. 205 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4135, 1975 WL 22431

Office of the Attorney General

State of South Carolina

Opinion No. 4135

September 26, 1975

***1** The South Carolina Parks, Recreation and Tourism Commission has been delegated the discretionary authority to determine which advertising agencies are competitive and qualified.

TO: Assistant Director of Operations

South Carolina Department of Parks, Recreation and Tourism

QUESTION INVOLVED:

What is the authority of the South Carolina Parks, Recreation and Tourism Commission pursuant to the proviso contained in Section 65 of the 1975–76 Appropriation Act which requires a certain procedure to be followed on awarding advertising and promotion contracts.

AUTHORITIES INVOLVED:

Section 65 of Act No. 237 (1975); 35A Words and Phrases; 8 Words and Phrases;

DISCUSSION:

Section 65 of Act No. 237 (1975) provides in pertinent part:

Provided, That all the amount appropriated under Item IV of this section for ‘Advertising and Promotion’ shall be on a competitive bid basis and placed with an advertising agency in this State. Provided, however, that if in the judgment of the Commission no competitive, qualified advertising agency is located in South Carolina, an out-of-state advertising agency may be employed on a competitive bid basis.

The second proviso above quoted is the one specifically questioned.

By the plain terms of this proviso, the Commission has been delegated the authority to judge whether or not there is a ‘competitive, qualified advertising agency’ located in South Carolina. If in the Commission's judgment there is no such agency, then the contract may be awarded to an out-of-state contracting agency only on competitive bid basis. In rendering such judgment, the Commission must consider two factors. First, they must consider whether the South Carolina agencies are competitive *vis á vis* with out of state agencies and, secondly whether they are qualified as opposed to the out-of-state agencies. Competitive has been defined to mean ‘of or relating to competition; characterized by, arising from or designated to exhibit rivalry among two or more equally matched individuals or forces, esp. for a particular goal, position, or reward . . .’ ‘Qualified’ is synonymous with ‘susceptible’; ‘capable’; ‘competent’; ‘fitting’; . . .’ 35A Words and Phrases ‘Qualified’ at 366. It is up to the Commission to judge whether or not there are any in state agencies which are equally matched to the out of state agencies and which are capable, competent and fitting for the specific ‘advertising and promotion’ project for which a contract is to be let. Thus, the South Carolina Parks, Recreation and Tourism Commission has been delegated the discretionary authority to determine which advertising agencies are competitive and qualified.

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