

1975 S.C. Op. Atty. Gen. 265 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4225, 1975 WL 22522

Office of the Attorney General

State of South Carolina

Opinion No. 4225

December 30, 1975

\*1 The Honorable Ernest A. Finney, Jr.

The Honorable R. R. Woods

The Honorable B. J. Gordon

The Honorable I. S. Levy Johnson

The Honorable John Matthews

The Honorable Hudson Barksdale

The Honorable Earl Middleton

The Honorable Theo Mitchell

The Honorable Joseph Murray

The Honorable Kay Patterson

Members

House of Representatives

The State Capitol

Columbia, South Carolina

Gentlemen:

You have requested my opinion with respect to a purported contract between the Department of Social Services, the Governor, and a California-based private corporation. I am informed that the proposal has not been implemented by the execution of a contract and I have before me only the proposal and a copy of a letter dated December 15, 1975, from Robert B. Carleson & Associates, Inc., Sacramento, California, to the Governor. This letter identifies the general scope of the contemplated procedure and essentially incorporates objectives which the Management and Consultant Firm would seek to analyze and delineate.

The proposal of the Governor, dated December 19, 1975, reads as follows:

‘I propose that the Department of Social Services Board agree to hire Robert B. Carleson Associates, Inc., Management and Consultant Firm, for the purpose of studying and correcting any deficiencies that may exist in the Department. This firm will have complete authority, short of replacing the Commissioner, to make personnel as well as programmatic changes as are necessary to improve the services of this agency.’

You inquire as follows:

‘1. The non-bid aspect, as reported by the Press.’

Section 1–24 of the Code of Laws, 1962, as amended, reads as follows:

‘Notwithstanding any other provision of law, all State agencies and departments, before contracting for fifteen hundred dollars or more with private individuals or companies for products or services, shall invite bids on such contract from at least three qualified sources.

‘Provided, however, that the provisions of this section shall not apply to professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding.’

The proposed consulting plan is submitted in the letter of Robert B. Carleson & Associates, Inc. The cost proposed is in the amount of \$150,000.00 and I assume your inquiry is directed to whether it is required to be let after competitive bidding.

In my opinion, the services proposed to be rendered are ‘professional services’ within the meaning of the proviso set forth above. In order to come within the exemption granted by the proviso, such services must also be rendered by one ‘customarily employed on a fee basis rather than by competitive bidding.’ At the present time, I am not able to state whether consulting services of this nature are customarily procured on a fee basis or by competitive bidding. We are undertaking efforts to ascertain this fact, and upon receipt of necessary data, a definitive conclusion can be reached.

\*2 ‘2. Whether a State agency has the right to by contract delegate to a non-State private agency, profit making, contract and management of that State agency.’

The proposal set forth above is, in my opinion, clearly contrary to the mandates of the Constitution of this State. An administrative agency of the State cannot abdicate its statutory authority and relinquish that authority to other individuals. The Directors of the Department of Social Services are vested by law and have the exclusive duty and authority to administer the affairs of the Department of Social Services. They may consult with and receive reports from those whom they may select to undertake specific tasks but they may not vest such persons with the judgmental and discretionary functions of their office. [Gould v. Barton](#), 256 S.C. 175, 181 S.E.2d 662.

‘3. Whether the Governor has the authority to participate in and bind the State to a contract, whereby a State agency delegates its authority to a non-State private corporation.’

What has been stated heretofore with respect to Question No. 2 is applicable to this question. In addition, as stated in [Heyward v. Long](#), 178 S.C. 351, 183 S.E. 145:

‘—the Chief Executive has no prerogative powers, but is confined to the exercise of those powers conferred upon him by the Constitution and statutes.’

In my opinion, Act No. 930 of 1974 (74 Acts 2028) affords no contracting power to the Office of the Governor. In any event a contract entered into cannot provide for the unconstitutional delegation of authority.

‘4. Whether under Federal regulations and laws a former Federal employee may enter the private sector and engage in a venture which could have grown out of his Federal employment.’

While Federal statutes prohibit former Federal employees from participating in certain contracts for a designated period, it is my opinion that this would not, per se, preclude this State from contracting with such a party, although it would doubtless not do so should that party be ineligible, by Federal law, to enter into such an agreement. It is my understanding

that inquiries are now being made to ascertain if Robert B. Carleson, the President of Robert B. Carleson & Associates, Inc., is eligible to participate in such a contract.

In substance, the proposal as set forth above cannot, in my opinion, be validly implemented on the basic ground that it constitutes an invalid delegation of authority.

Very truly yours,

Daniel R. McLeod  
Attorney General

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