

1974 WL 27478 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 11, 1974

**\*1 Re: Gatlinburg Construction Company**

Honorable P. C. Smith  
Secretary ex officio  
Budget and Control Board  
P. O. Box 11333  
Wade Hampton Office Building  
Columbia, South Carolina 29211

Dear Mr. Smith:

This letter is written in response to a request by Winthrop College along with Mr. Sampson of your office regarding the validity of a contract which Winthrop College entered into with Gatlinburg Construction Company for construction of a swimming pool.

Apparently, Gatlinburg was the lowest bidder for the project, however, due to a shortage of funds Winthrop has not allowed the contract to be performed. Moreover, Winthrop did not get the approval of the Budget and Control Board prior to entering into the Contract.

Consequently, it is my opinion that Winthrop's action was ultra vires and actually no valid contract was entered into. It seems that one remedy to this problem could be the ratification of the contract by you which would under a 'relation back' theory make the contract valid and also it would allow Winthrop to reach a reasonable settlement with Gatlinburg for the construction of the pool.

In view of the foregoing, it is the opinion of this office that Winthrop may, with the approval of the Attorney General, make settlement of Gatlinburg's potential claim against Winthrop for breach of contract by negotiating a reasonable ?? amount to the original contract and permitting performance thereunder.

If you have any further questions, please contact this Office.

Sincerely,

J. Melvin Screen  
Legal Assistant

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