

1973 WL 27632 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 26, 1973

*1 Mr. Greg Morrison
State Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Mr. Morrison:

In answer to your inquiry regarding whether or not the State Department of Education can sell typing materials developed for your agency to a publishing company, apparently the answer is that such a procedure would be prohibited. See 81 C.J.S. States § 26 which states in part:

. . . as a general rule, where the constitution does not so permit, the state may not engage in business of a private nature . . .

Also see [McCullough v. Brown](#), 41 S.C. 220 (1893) to the same effect. However, [McCullough](#) was overruled by [State v. Aiken](#), 42 S.C. 222 (1894) which held that states may engage in trade if it is related to its police powers. [These cases were decided under the State Constitution of 1868; however, the pertinent provisions were not significantly changed by the subsequent Constitution of 1895.]

By legislation, agencies have been authorized to sell products; i.e., the election commission's selling of lists of registered voters, South Carolina Code of Laws, 1962, as amended, Section 23-31(11); the Tricentennial Commission's ability to establish a schedule of fees for the right to reproduce the official seals, Acts and Joint Resolutions 1968 (55) 3194. Therefore, if your agency still desires to sell these products, authorization apparently should be secured from the General Assembly by appropriate legislation.

Sincerely,

Treva Ashworth
Legal Assistant

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