

1973 WL 27736 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1973

**\*1 In Re: Preconstructed Seating Equipment, Installation of - - - Effect of General Contractor Law**

Mr. L. P. Hamilton  
Chief Engineer  
State Budget and Control Board  
Wade Hampton Building  
Columbia, South Carolina

Dear Mr. Hamilton:

You have inquired whether or not a supplier of manufactured seating equipment costing \$30,000 or more must be licensed as a 'general contractor' under provisions of Section 56-401, et seq., 1962 Code of Laws of South Carolina, as amended. It is assumed that such supplier will be required to do the necessary work relative to securing the seating equipment to the building.

Section 56-401(1), 1962 Code of Laws of South Carolina, as amended, defining the term 'general contractor', reads in pertinent part:

' - - - one who - - - undertakes - - - the construction - - - of any - - - improvement - - - .'

With reference to a building, the foregoing definition is two-pronged in its applicability, viz.:

1. The item under consideration must be an 'improvement' to the structure.
2. The item under consideration must be 'constructed'.

There is no question that the seating equipment about which you inquire is an 'improvement' to the building, being permanently attached thereto. It is not so clear that such equipment is 'constructed'.

The Oxford English Dictionary defines the word 'construct' as follows:

'To make or form by fitting the parts together'.

The Supreme Court of the State of Mississippi defines the term 'construct' as:

'to build or erect something which theretofore did not exist'.

[Muirhead v. Pilot Properties](#), 258 So. 2d 232.

In an early Alabama case, the court made a distinction between attaching manufactured steps to a building, which the court said did not constitute 'construction', and the building of the steps from parts, which the court said would constitute 'construction'.

[Kinney v. Ehrensperger](#), 77 So. 439, 16 Ala. App. 289.

Another factor that enters into the picture is the well-known rule of statutory construction that requires that a criminal statute be construed strictly against the State and in favor of the defendant when the words of the statute do not clearly establish criminal liability. The General Contractor law is a criminal statute, since criminal penalties are provided for violation. Sec. 56-426 and 56-426.1.

Even without the criminal construction rule, it does not appear that there is substantial authority to support the proposition that the attachment of manufactured seating equipment to a building, new or old, constitutes 'construction of an improvement' within the meaning of Section 56-401. Without doubt, such activity results in an 'improvement', but it is not the result of 'construction' within the meaning of the subject statute.

Daniel R. McLeod  
Attorney General

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