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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

May 26, 1999

The Honorable Converse A. Chellis, III
Member, House of Representatives
308 Blatt Building
Hand Delivery

Dear Representative Chellis:

You have asked for advice related to a constituent's concern about a school photography contract. The constituent questions whether such contacts are a restraint of trade and competition and a violation of the state procurement code. His particular concerns include the validity of contract provisions that the school receive a portion of the sitting fee paid by students for each senior portrait and the school's requirement that photographs published in the yearbook be taken by the contract photographers.

First, I note that a previous opinion of this Office has concluded that State agencies are not subject to unfair trade practices actions. *Ops. Atty. Gen.* (February 5, 1995). The same reasoning that supports that opinion would also support a conclusion that school districts are not subject to suit under that law. I also note that the State's Procurement Code requires that political subdivisions school districts adopt procurement procedures. S.C. Code Ann. §11-35-50 (Supp. 1998). I suggest that the constituent may want to check with the district in question for a copy of its procurement policy.

For your reference, I am also enclosing copies of a Pennsylvania court decision and opinions of Offices of the Attorney General from other states approving photography contract provisions including provisions for schools receiving shares of fees and exclusive yearbook contracts. *Morris v. School District of Erie*, 32 Pa. D & C. 3d 335 (Pa. Com. Pl. 1985); 65 *Ops. Cal. Atty Gen.* 326; *Tn Ops Atty. Gen* 81-612, 81-545; but see 1982-83 *Va. Ops. Atty. Gen.* 411. I have also reviewed some opinions and memoranda referenced by your constituent which have reached contrary conclusions as to some of these issues. *LaPorte v. Escnaba Schools*, 214 NW2d 840 (1974); *Ops. Or. Atty. Gen.* (1974); *WVa. Attorney General's Memorandum* (May 1980 - note 1); *Vermont Attorney General's Office Memorandum* (January, 1976).

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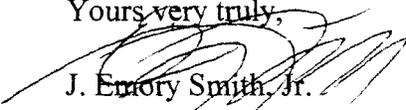
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Given that some jurisdictions have concluded that provisions similar to the rebate of the sitting fee and the publication requirement are valid, I could not conclude that these provisions are contrary to State law without reviewing the facts related to such issues, particularly when the Unfair Trade Practices Act does not apply. Such a factual investigation is beyond the scope of Opinions of this Office (*Ops. Atty. Gen. December 12, 1983*).

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General