

The State of South Carolina



Office of the Attorney General

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January 8, 1991

The Honorable Irene K. Rudnick
Member, House of Representatives
Post Office Box 544
Aiken, South Carolina 29802

Dear Representative Rudnick:

You have advised that Aiken County is considering entering into a lease-purchase agreement for the purpose of renovating the Bath Mill, which is to then be used for county office space. You advised that the renovation of this mill will cost millions of dollars, the exact figure being unknown at this time. You advised that the County plans to sign this lease-purchase agreement with the Horse Creek Valley Partners without asking for bids from anyone else. You have asked whether state law requires bids for a project of this magnitude.

The South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10 et seq. (1986), applies to "every expenditure of funds by this State under contract acting through a governmental body as herein defined..." § 11-35-40. The term "governmental body" is defined in § 11-35-310(18) and specifically excludes "the General Assembly and all local political subdivisions such as counties, municipalities, school districts or public service or special purpose districts." Thus, counties are specifically excluded from applicability of the State's procurement statutes. We are not aware of other statutes which would require a county to solicit bids for a project of this magnitude.

Counties are required to have their own procurement ordinances or procedures, however, as is stated in § 11-35-50: "All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." It would be up to Aiken County Council to adopt an ordinance as required by § 11-35-50, though that statute does not require any specific procedures to be followed in the procurement process. Thus, you may wish to examine Aiken County's

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ordinances or procedures relative to procurement, to determine whether this factual situation is covered by the ordinances or procedures and, if so, whether the ordinances or procedures are being followed.

You have also asked whether it is possible for the electors of a county, under the initiative provisions of home rule (§ 4-9-1210 et seq.), to have the authority to initiate an ordinance requiring that a referendum be held before any county office can be moved from one location to another.

Section 4-9-1210 provides in relevant part that the "qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls." This right to the initiative and referendum process is not unlimited, however, as it may not be used to avoid general statutes or constitutional provisions, see Op. Atty. Gen. dated June 28, 1978, or to do indirectly an act which cannot be done directly, Op. Atty. Gen. dated July 31, 1990. See also Article VIII, § 14 of the State Constitution. No specific question has been presented to this Office for review, and so we cannot say with certainty that such a question would be appropriate for the initiative and referendum process. Any such proposed question should be examined for its impact on provisions such as Article VII, § 8 of the Constitution; Article VIII, § 6 of the Constitution; § 4-1-20; § 4-1-30; § 4-1-80; § 4-1-90; and perhaps others, as this list is not meant to be exhaustive but instead representative.

We are hopeful that the foregoing will offer sufficient guidance to the questions which you have raised. Please advise if you have additional questions.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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