

The State of South Carolina



Office of the Attorney General

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February 25, 1986

Mr. William T. Putnam
Executive Director
State Budget and Control Board
Box 12444
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Dear Mr. Putnam:

You have requested the advice of this office as to several questions concerning the South Carolina Consolidated Procurement Code (Procurement Code) posed by a school district. See, §11-35-10, et seq., of the Code of Laws of South Carolina, 1976, as amended by Act 109, Acts and Joint Resolutions of South Carolina, 1985. The school district has withdrawn its request for advice as to its first question. Therefore, I will provide advice only as to the second and third questions unless you need further assistance as to the first. The questions relate to the following relevant portions of Section 1 of Act 109:

"Irrespective of the source of funds of any school district whose budget of total expenditures, including debt service, exceeds seventy-five million dollars annually is subject to the provisions of the [Procurement Code] and shall notify the Director of the Division of General Services of the Budget and Control Board of its expenditures within 90 days after the close of its fiscal year [unless the district has its own procurement code which has been approved in writing as being substantially similar by the Division of General Services]."

The school district has asked whether application of the Procurement Code would be postponed until the next fiscal year following the one in which \$75 million dollars in expenditures are budgeted. "[W]hen the language is clear and unambiguous it must be held to mean what it plainly says." Detyens v. Maguire, Opn. No.

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351, Davis Advance Sheets, December 31, 1984. Here, the law provides that a district "...whose budget exceeds seventy-five million dollars...is subject to..." (emphasis added) the Procurement Code without qualification as to time. Therefore, the Procurement Code should apply in the fiscal year in which those expenditures are budgeted. The time required for notification should not alter the time required for compliance with the terms of the Procurement Code or an alternative approved district procurement code. These conclusions are consistent with previous opinions of this office which have found that the Procurement Code is a remedial statute which should be construed broadly in light of its legislative purpose in favor of competitive bidding. Ops. Atty. Gen. (January 24, 1984).

The school district has also asked whether it would have to continue to comply with the Procurement Code in subsequent years if its expenditures were less than the \$75 million. The Procurement Code provides no express guidance as to this question; however, given the remedial nature of the statute noted above, a reasonable construction of this law would be that a district having a budget in excess of \$75 million would have to continue to comply with this law in subsequent fiscal years even though its budgeted expenditures dropped below this sum in those subsequent years. This construction of the law is consistent with the use of the word "annually" which can be interpreted to refer only to the length of the budget period. See, Websters Third New International Dictionary, "Annual". Moreover, this interpretation appears to produce a more reasonable result than would construing it to allow the application of the Procurement Code to vary from year to year according to budgetary fluctuations. Sutherland Statutory Constructions, Vol. 2A, §45.12. That this result was intended is further supported by the reference in the law to procurement audits that must be performed every three years which indicates a legislative intent that school districts must continue to comply with the Procurement Code despite variations in budgeted spending (See, Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E. 2d 258 (S.C. 1984)); however, although these provisions indicate that continued application of the Code is required, legislative clarification may be desirable for application of the law in future years.

In conclusion, under Act 109, school districts must comply with the Procurement Code or an alternative approved local code during the fiscal year in which it has budgeted expenditures of \$75

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million dollars or more. This statute indicates that district must continue to comply with these codes in subsequent years even though its budgeted expenditures may drop below this sum.

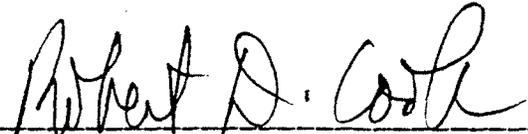
If you have any additional questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr:st

REVIEWED AND APPROVED BY:



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