

1979 WL 43195 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1979

*1 Mr. Harold A. Jenkins
Vice President for Business and Finance
South Carolina State College
Orangeburg, South Carolina 29117

Dear Mr. Jenkins:

You have recently requested an opinion from this Office concerning the responsibility, if any, of South Carolina State College for the fee for a performance by Rev. Piper and Ensemble, held at the Martin Luther King, Jr. Auditorium on April 29, 1979. As you know Rev. Piper claims to be due the sum of \$200, under an April 26, 1979, contract signed by himself and by Mr. Archie Smart, the then president of the Student Christian Association of South Carolina State College. According to my conversation with Dr. Oscar Butler, Mr. Smart was not authorized to enter contracts on behalf of the College and no college official has approved or ratified the above-referenced contract.

It is the opinion of this Office that in the absence of a ratification or an adoption of the contract by the College, it is not liable for any obligation purported to arise under it. One legal authority provides:

If one party, without any sufficient authority, makes a contract on behalf of another party as principal, the latter is not bound thereby. Nevertheless, the principal has a power of ratification. Vol. 1A, Corbin on Contracts, § 229, p. 340.

Where one contracts as agent for another, but without power to bind him, the purported agent binds himself either as a principal contractor or as an implied warranty of his authority. A subsequent ratification by the named principal cures all defects, however, binds the principal to the contract made and discharges the agent from personal liability; it operates as a novation. Vol. 2, Corbin on Contracts, § 365, p. 271.

The law of South Carolina has been in accord with the above rule of law for a long while. In [Singleton v. Hilliard, 1 Strob. 203 \(1847\)](#) the general rule was articulated accordingly:

Without the concurrence expressed, or plainly implied by the words or conduct of a party, [it] cannot be bound by the acts of another apparently assuming to be [its] agent, nor by a mistaken conclusion drawn by a third party, of such agency.

As a general rule an agent may be held liable personally on a contract unauthorized by the principal. [Skinner & Ruddock, Inc. v. London Guarantee & Accident Co., 239 S.C. 614, 619, 124 S.E.2d 178 \(1962\)](#) and [Medlin v. Ebenezer Methodist Church, 132 S.C. 498, 129 S.E. 830 \(1925\)](#). Thus, Mr. Smart may be liable on the contract, though he signed it as a 'witness.' Moreover, Mr. Piper's negligence in ascertaining the scope of Mr. Smart's authority would prevent his recovery under the contract against the College:

A third person dealing with a known agent may not act negligently with regard to the extent of the agent's authority or blindly trust the agent's statements in such respect. Rather, he must use reasonable diligence and prudence to ascertain whether the agent is acting and dealing with him within the scope of powers. The mere opinion of an agent as to the extent of his powers, or his mere assumption of authority without foundation, will not bind the principal; and a third person

dealing with a known agent must bear the burden of determining for himself, by the exercise of reasonable diligence and prudence, the existence or nonexistence of the agent's authority to act in the premises. The principal, on the other hand, may act on the presumption that third persons dealing with his agent will not be negligent in failing to ascertain the extent of his authority as well as the existence of his agency.

*2 3 Am. Jur.2d, Agency, § 78, p. 482-83.

In conclusion, South Carolina State College does not appear to have any liability under the contract. Mr. Piper may be able to recover his fee from Mr. Smart.

Sincerely,

Barbara J. Hamilton
State Attorney

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