



Code), is applicable to the proposed transaction, and questions MUSC's authority to enter the agreement without legislative action. By letter dated April 11, 1996, Roper protested the agreement between MUSC and HCA, alleging violation of the Procurement Code. The Chief Procurement Officer (CPO) delayed conducting a hearing on Roper's protest due to pending legislative action involving the proposed transaction. On June 6, 1996, the Governor signed into law Act 390, which specifically authorizes the Board of Trustees of MUSC to "enter into reasonable agreements to transfer the management and operations of the Medical University Hospital to one or more private operators...." The CPO issued a decision on July 1, 1996, dismissing Roper's protest for lack of jurisdiction based on Act 390.

#### **CONCLUSIONS OF LAW**

Act 390 of 1996 provides that "[a]ll agreements, the manner in which all agreements are made and the implementation of all agreements must comply with all applicable laws." This very broad language would certainly include the Procurement Code, if applicable. Roper argues that its protest raises the issue of the violation of the Procurement Code in the manner in which the agreements were made. Roper admits that it participated in MUSC's solicitation of proposals, which it now protests as flawed. A protesting party has only fifteen days from the day solicitation documents are issued, under S. C. Code Ann. section 11-34-4210, to file a protest of the solicitation. Even if formal solicitation documents were not issued in this case, Roper had knowledge of the allegedly illegal procurement by at least early 1995. Roper did not file a protest of the

manner in which MUSC was proceeding until April of 1996. If the Procurement Code is applicable, Roper is clearly beyond the time allowed for protesting the manner or method of solicitation. However, for the following reasons, the Panel finds that the Procurement Code is not applicable in this case.

Act 390 of 1996, codified at S. C. Code Ann. Section 44-7-3110, specifically provides that:

the approval requirement for the transaction authorized in this act shall be governed by the provisions of Section 1-11-65 of the 1976 Code, and compliance with the provisions of this act is exclusive and shall satisfy the approval requirements of any and all other statutory provisions requiring the review and/or approval of any agency, department, or division. [emphasis added]

The emphasized language states that the legislation is the exclusive requirement for approval, and any other statutes requiring approval or review are satisfied by compliance with this legislation. The Procurement Code and related regulations require leases involving governmental bodies to be approved by the Office of General Services. In addition, major leases are required to be approved by the Joint Bond Review Committee and the Budget and Control Board. See, Regulation 19-445.2121. Clearly, the language of Act 390 is meant to supersede the approval requirements of the Procurement Code and related regulations.

The foremost rule for interpreting a statute is to ascertain the legislative intent. The South Carolina Supreme Court recently stated in Whitner v. State, Op. No. 24468 (S. C. Sup. Ct. filed July 15, 1996) (Davis Adv. Sh. No. 19 at 22,

...where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the particular statute itself. *E.g.*, *State v. Ramsey*, \_\_ S.C., 430 S.E.2d 511 (1993) We should consider, however, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *E.g.*, *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). Finally, there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects. (Cites omitted).

Act 390 of 1996 states that "compliance with the provisions of this act is exclusive". The plain language of the Act excludes all other statutory laws requiring review or approval. The clear intent is to exclude MUSC's lease agreement from any review other than the requirements stated in Act 390 of 1996. The Panel's review of procurements is authorized by S. C. Code Ann. Section 11-35-4410(1) of the Procurement Code. The General Assembly, by enacting Act 390 of 1996, exempts the MUSC lease agreement from review under the Consolidated Procurement Code and related regulations. The Panel does not have jurisdiction to review the proposed lease agreement between MUSC and HCA. Roper's protest is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

BY:   
Gus J. Roberts, Chairman

Columbia, SC

August 12, 1996