

From: Smith, Austin <AustinSmith@gov.sc.gov>
To: Pisarik, HollyHollyPisarik@gov.sc.gov
Date: 9/25/2015 4:21:29 PM
Subject: Fwd: Adventure Golf Carts complaint against DOC prison labor industry
Attachments: prison code highlighted 09-22-2015.docx
ATT00001.htm
Prison labor SC Code of Laws chapter 3.docx
ATT00002.htm

Stirling anticipates litigation in this matter. He suggested that legal counsel be engaged in communications with this company.

Begin forwarded message:

From: Jim Foster <JFoster@sedd.us>
Date: September 25, 2015 at 11:06:12 AM EDT
To: "austinsmith@gov.sc.gov" <austinsmith@gov.sc.gov>
Cc: Tommy Stringer <tommy@stringercompany.com>, "Joshua Putnam (rep.jputnam@gmail.com)" <rep.jputnam@gmail.com>, Chad Galloway <chad@adventuregolfcarts.net>
Subject: FW: Adventure Golf Carts complaint against DOC prison labor industry

Governor Haley
Austin Smith

Please read the email below and the attachments. We wanted to let Governor Haley know what we have an issue with and what we think the State should do immediately to bring us and the other golf carts dealers in the State relief from further monetary damages. This will also stop the abuse by DOC of selling prison labor to private industry at absurd wages. I sent our representative Joshua Putnam and Representative Tommy Stringer this same email. Joshua has had several conversations with the DOC. Yesterday; DOC told Joshua that they would take King of Carts and Garrett's Golf Carts out of the Service Division of the prison labor system and offer them a position in the Manufacturing Division of DOC prison labor system. This not the level of relief we are seeking. The immediate cease and desist of all activity by King of Carts and Garrett's on prison property is appropriate for the severity of the failure of the SC Department of Correction, The Commerce Department and The Budget and Control Board to comply with SC law. All three Departments are in noncompliance with the State Code of laws we have attached. It appears this has been so for years and damages have been incurred from day one of that noncompliance. We ask that the State stop all prison business activity with King of Carts, Garrett's and any yet to be known golf cart companies today. We ask that before any further prison labor business is conducted with them, the State complies with its laws.

If indeed it is discovered that proper workers compensation insurance or liability insurance hasn't

been in place, the taxpayers of the great state of South Carolina need to know why the State would expose them to liability law suits in regard to golf cart accidents and worker injury. My hope is that the failure to comply with SC law, by three very important State departments, is gross negligence and not some heinous form of crony favoritism. Our state has had much to live down and through over the years. Our hope is that this isn't a deliberate act to benefit individuals or specific private companies that took advantage of prisoners, while altering the free market balance of commerce. Please do not underestimate the resources or passion we have to correct the multiple wrongs we see going on here. We are fully prepared to apply legal and media pressure to get immediate relief. Rather than be pressed to do that, we would prefer for the State to correct its mistakes and let us go back to running our business.

We are fully available to answer any questions.

Regards,

Jim Foster

Jim Foster
President
Adventure Golf Carts LLC
403 Highway 183
Piedmont, SC 29673
O: (864) 603-2299
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Tommy and Joshua,

Please read all below and attachments. Chad and I are not politically savvy men. We don't know how to get this resolved quickly other than getting a lawyer and seeking whatever action would give us immediate relief. I would prefer to give the State a chance to move without lawyering up. I would also prefer to not have a big media issue, but that is what started the whole event. What can you guys do to make this issue go away immediately? Please don't take my words as threatening, but I want to be clear. If the State doesn't promptly show us where we are wrong or gives us immediate relief, we are prepared to battle it out in the media and the courts. We are suffering damages daily by having to sell carts below market because of the KOC. We are also very concerned that the rumors that another competitor has already started production at Tyger River or Perry are true. Can you verify that?

Remember, the State's damages are not just with Adventure Golf Carts. There are many golf cart dealers in and out of SC that have felt the pain of KOC. I realize the Legislature is out of session, which is not a reason this can't be resolved now. Every day that KOC and now maybe another golf cart company, send carts out of a SC prison industry site there are damages accruing against some dealer.

Please call if you have suggestions or questions. We ask that you forward our email to anyone you think that can bring resolution.

Thank you,

Jim Foster 270-8605

To Honorable members of the South Carolina Legislature:

I am writing to express the great concern my partner Chad Galloway and I have with the prison labor program and the overwhelming wage advantage it gives at least one of our competitors. We can verify, via The Department of Corrections (DOC) website info, one competitor, but we have heard another golf cart company is also opening up in an upstate prison. We opened our new company Adventure Golf Carts LLC (AGC) at 403 Highway 183 Piedmont SC on August 1st, 2014. Our business plan was to sell and service golf carts to residential and commercial users. We buy golf carts coming from golf course leases, customize them and sell them for neighborhood carts, hunting vehicles and whatever the individual's imagination desires. In 2015, we had a competitor open approximately 1.5 miles from our facility. The competitor is King of Carts (KOC). AGC isn't afraid of competition and we understand that is the American way. But, right away we had customers telling us about KOC's low pricing. It was \$200-\$400 less per like cart. This was well below the existing market price. We had heard that KOC was using prison labor, but we had no idea to what extent or to what labor cost advantage that gave KOC against the rest of us in the golf cart business.

Our eyes were opened on September 6th when I was reading the Greenville News before going to church. Low and behold on the front page, in an article written by investigative reporter Tim Smith, was the answer. KOC was getting its labor for .35\$ to 1.80\$ per hour verses our \$18.00 per hour raw cost. Obviously, when you are paying 10 times the amount that your competitor is paying, you are at an extreme disadvantage. Mr. Smith's article pointed out two problems with this radically below market base wage. There is an inhumane side of paying a person \$1.80 per hour or less that has to be considered too. We have heard the DOC company line on that side of issue as well as the business side. We have numerous questions about both issues.

Chad and I started our own investigation into how this situation could be possible. It appears that DOC, the Commerce Department plus the Budget and Controls board are not in compliance with State law. I have attached the SC Code of Laws taken 09-22-2015 from the SC Legislature web site and highlighted the points we feel need immediate remedy.

Before we go any further, we want to be clear about our position on these issues. We are in full support of the humane treatment of prisoners. We support a work system that trains prisoners so when they return to society they support themselves and their loved ones. We feel strongly that wages earned by inmates should go to the following: child support, restitution and to help defray the tax payers cost of incarceration. We also believe in free markets and the free enterprise system. We don't blame KOC, and the yet to be discovered , name of a second golf cart company using Penitentiary prison labor, for taking advantage of the system of prison labor that appears to be illegally and immorally in existence in the great state of South Carolina. Our issue is with the responsible parties in the State of SC.

Please refer to the attached SC Code of Law document to see the areas that appear to not be in compliance.

Section 24-1-20 states that convicts shall have humane treatment. It has been argued in the newspaper by Rep. Joe Neal and Senator Karl Allen that prison labor wages are anything but humane and the term "slavery" has been used. Assuming the SC legal system functioned properly; the prisoners are there by their own hand. It may be fair to assume that they have volunteered to work in the offered program. Keep in mind that the State has the upper hand and in this case the heavy hand that limits any and all activities of the prisoners. Paying 35 cents to \$1.80 per hour is abusive. My first job dipping ice cream at a Baskins and Robbins in Spartanburg SC in 1970 was at \$1.10 per hour.

Section 24-1-150 states in part that the director will annually complete an inventory of ALL property of every description with actual market value. We suggest this be reviewed to see what the prisons value is for the real estate, building, forklifts, etc. that may be used in the prison industry system. This should be compared to local market value to verify that the DOC is charging the proper rates to the private industry using State property.

Section 24-1-170 implies that there is a profit and loss statement for each private industry using the prison industry labor system, especially the ones that are on state property. We would like to see if this makes good business sense for the taxpayers of SC and not a subsidy for a few private businesses. Where is that info and how can we see it?

Section 24-1-220 is obvious as stated.

Section 24-1-290 states all the requirements that the State has determined must be in place to have a prison labor system. So far, we have found no one in Commerce, the DOC or Budget and Controls that has any idea that any of the requirements are met today or in the history of the prison labor system. If indeed the noncompliance is true, a complete shutdown, of the two companies in question, use of prison labor on the taxpayer's property is expected.

Section 24-1-295 is the most confusing, and quite possibly the trickiest law, I have ever seen. In the title of the section, the term "prison industry service work" is not found, yet it is lumped in with prison labor to make products for export and how the prisoners' wages are to be handled. Yet this appears to be where the DOC tries to justify one of the divisions of prison labor. There are three divisions; Traditional, Service and Manufacturing. "Service" is the division where the golf cart companies are getting labor for way below market and who knows what below market lease and use rates for using State facilities. The problem is that it appears no one verified that "The use of inmate labor may not result in the displacement of employed workers in the local region in which work is being performed". The wording that allows for the wages of the Service division to be less than the prevailing wage is in direct conflict of other Sections of the code and all senses of business logic. Even using below prevailing market for wages on products exported to a third world country that pays slave labor wages does make economic sense or sense in respect to the humane treatment of the inmate.

We applaud the effort described in this section to take percentages from earned prison wages and paying restitution, child support, etc. However, at 35 cents or even on the high end of the range \$1.80 per hour, what is the point? If a prisoner worked 40 hours at \$1.80 per, their gross would be \$72.00. I assume federal and state employment taxes would be taken out, but for this example we will not. It is hard to imagine that that amount of money is impactful.

There are many questions that come to mind about the full cost of employees to an employer in

the free market. I suggest we find out who pays the employers portion of employee tax? Who pays workers comp and at what rate. If the private company is paying that, a certificate of insurance surely is on file with DOC. Obviously, other employee perks and related costs are not there for the DOC , but they must be included in any fair evaluation of prevailing employee cost is the golf cart industry. Examples are: vacation, paid holidays and insurance. Insurance complicates the evaluation. As I understand the ACA, a business owner must add in all employees in all companies he has a 50% ownership in. KOC and others are probably by passing adding in the number of inmates working on their private business on state property. Unless you are a small business owner, you have no idea what heart burn and uncertainty ACA causes the owner and his employees. Plus, it can be incredibly costly to meet the requirements.

Continuing on to Chapter 3 of the state Prison System, see second attachment.

Section 24-3-20 is more about not displacing workers in the private sector or paying below market wages for similar work.

Section 24-3-310 Declaration of intent. (3) No possibility of private profits disallows the entire "service work" and manufacturing division of the prison labor industries because there is obvious profit being made. (4) It is impossible to make an appreciable payment to these lofty obligations at \$1.80 per hour.

Section 24-3-315 is even stronger wording to not allow wages to be anything less than market wages.

Section 24-3-410 If the Prison Industry of SC was in compliance with what appears to be Federal Regulations, no displacement of workers or less than market wages is allowed.

Section 24-3-430 The DOC can decide what private industry gets to take advantage of the prison labor system. An examination of this process and its compliance with 24-1-290 is required immediately. (B) again, compliance with 24-1-290 is required. The rest of the Section states, yet one more time, that employee displacement is not allowed nor is a prisoner wage less than prevailing wage.

The remainder of Chapter 3 doesn't appear to pertain to the discussion of improper, inhumane and illegal use of prison labor.

We also suggest that the Legislature have DOC, Commerce and the Budget and Board review the practice of "servicing" which is a complete misuse of the definition, golf carts with prison labor on prison property. There are a multitude of business questions that come to mind. Such as: workers compensation insurance, who pays and how much. Surely that is required. If not, why is a prisoners loss of earnings and earning power in the future less valuable than the private industry worker he is displacing the community? Liability insurance on the golf carts being manufactured by prisoners on State property would seem mandatory to protect the deep pockets of the State of SC and its taxpayers. Imagine the very real possibility of a golf course cart, which has been altered to a street use cart from its original condition, flipping over and severely injuring or killing a mother, her surgeon husband and 2 of her children. It is determined that the work done on the cart by prisoners was the cause of the accident. When the family starts legal proceedings, as they should, and it is found out that KOC plus the State of SC are involved in the liability, the plaintiff lawyer will probably focus on the deeper pockets, which is the State of South

Carolina. Another question worth pursuing is how the complete modification of a golf cart, designed to carry two people and their golf clubs to a street cart for carrying 4 people, is "Service" ? We feel it is clearly manufacturing and the term "Service" is a manipulation to get the work done at below market wages. The "manufacturing" division of prison labor industry is required to pay much higher wages than the Service or the Traditional divisions.

We also ask how many released prisoners are now employed by KOC or any other golf cart company. If the answer to that question is none, why not? One possible answer is to Representative Neal's point of slave labor. Why would KOC pay market wages when they can get the State DOC to plug in another prisoner worker for no more than \$1.80 per hour? We anticipate one of DOC's responses to be, AGC can use the system too. Please read above about displacing workers. Why would we need all of our current team if prisoners are doing their jobs? Are we to fire our Army veteran or our man with a 3 year old child whose wife is expecting? Are we to stop supporting Anderson School Dist. 1's Career Center by dropping our second student we have from them? By the way, we pay him \$9.00 per hour part-time. The next point from DOC may be, the program has a 10% less rate of recidivism. That is a flawed statement because the inmates that volunteer to work, rather than sit, are probably the least likely to return to prison anyway. I hope the program is successful at training workers for jobs when they are released, but that record needs to be verified. Does DOC have a prisoner job placement program for prisoners returning to society?

We are not politicians or lawyers. Chad and I are entrepreneurs and businessmen who have a deep passion for protecting our business and our employees. We see the State of SC as illegally underpaying prisoners, who have no recourse but to sit in their cells deteriorating than to work for less than a tenth of prevailing wages. I admire a man for doing that. It shows the right attitude. But per Mr. Neal and Senator Allen's complaint, that heavy hand can be construed as forced labor. It gives KOC and the other golf cart company that is still unknown, a State sponsored wage advantage that is detrimental to the financial health of our business. That advantage adversely affects our employees' families and our families. That abusive wage doesn't allow the prisoners, who want to change their lives, learn a skill and return from prison a responsible member of society a chance to be properly compensated for their contribution to the profitability of a private company. The profits to the private companies come straight from the inmate's pockets and from State coffers. This doesn't play well with tax payers or voters.

All the statements in this email are based on data we found during our limited time to research the DOC, Commerce department, Budget and Controls and SC Code of law, but all evidence we have found appears to point to this being an illegal and inhuman State run operation. Based on that appearance, we ask that the State cease and desist all of KOC's and the unknown golf cart company's prison labor industries immediately. In our opinion, we have already suffered substantial financial damage. Allowing this prison industry operation to continue, will only increase the damages to AGC and the other golf cart dealers in and out of SC. The golf cart industry in SC has had no reason to form an association in the past, but that has changed. We are now in the process of doing so and are prepared to hire legal counsel, if a timely and absolute remedy isn't delivered by the State. We are reasonable men. If we can be shown that our position is wrong, we will stop our efforts.

We suspect, but can't verify that KOC isn't the only golf cart company that the State is engaging in, what appears to be, illegal business ventures. It looks like there are other private companies using prison labor, but that info isn't readily available. They aren't mentioned here because we

have not been able to find out who they are or how their respective industries may be affected. Also, we don't feel qualified to speak about other industries, only the golf cart industry.

Respectfully,

Jim Foster- President

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