

From: Smith, Austin <AustinSmith@gov.sc.gov>
To: Boone, Susan <SBoone@dew.sc.gov>
Pisarik, Holly <HollyPisarik@gov.sc.gov>
CC: Stanton, Cheryl <cstanton@dew.sc.gov>
Scott, Darrell <DScott@dew.sc.gov>
Date: 1/28/2016 3:17:23 PM
Subject: RE: Assistance and Feedback

Susan,

I'm happy to address your concerns. I am confident that the Executive Order will not result in a violation of federal law as long as we all work together. Please give me a call at your convenience, and we'll take a deep dive on this.

Best,

Austin

Austin M. Smith
Deputy Chief of Staff - Cabinet
Governor Nikki Haley
803.734.5156

From: Boone, Susan [mailto:SBoone@dew.sc.gov]
Sent: Thursday, January 28, 2016 12:27 PM
To: Pisarik, Holly
Cc: Stanton, Cheryl; Scott, Darrell; Boone, Susan; Smith, Austin
Subject: Assistance and Feedback

Holly, I hope this finds you well. We are writing regarding Executive Order 2016-06 issued earlier this week. DEW fully supports the Governor's real estate initiative and the selling of state properties to remove the state as landlord. We are concerned, however, about how to comply with the Executive Order as it relates to some of the parameters regarding the sale of real property and United States Department of Labor (USDOL) restraints on real property purchased with federal funds, which preempt state law.

USDOL guidance requires that proceeds from the sale of real estate purchased through federal grant funds be returned to the federal programs and used for expenditures approved by USDOL. Most of our agency's buildings (including many being considered for sale) were purchased through federal grant funds. In fact, our agency headquarters, which is located at 1550 Gadsden Street, is over 94% federally funded and less than 6% state funded. Based on USDOL guidance, sale proceeds from these properties could only be used for unemployment insurance and employment services program activities. Further to these federal requirements, DEW must notify USDOL when a property is disposed of and report on a quarterly basis the expenditure of the disposition proceeds. Thus, we are concerned that in complying with EO 2016-06 we will violate federal law.

There are other aspects of the EO that are of concern to us with respect to the methodology for leasing space. We can do a deeper analysis of this issue if that would be helpful.

Director Stanton raised these concerns with Director Adams beginning last year, but to no avail. We have a couple of options to get clarification on these issues and we would like your feedback on those before moving forward. First, we can reach out to USDOL via email and request an informal opinion on EO 2016-06's conformity with federal law. The other option is for DEW to request a formal opinion from USDOL on conformity with federal law. The former typically takes less time to receive a response, but it is not the "official" position of USDOL. The latter generally takes longer, but does represent USDOL's official position on the matter.

We would appreciate your thoughts on this so that we know how to proceed. We want to make sure we meet the Governor's expectations and mandates, but also want to prevent SC from running afoul of federal law. Please do not hesitate to call if you would like to discuss this further.

Thank you,

Susan M. Boone
Chief Legal Officer
SC Department of Employment and Workforce
Ph: 803.737.2176