

HISTORY OF PRIVATIZATION PROGRAM

Prior to HB 1212, Section 24-50-128, which was adopted in 1963, addressed the area of personal services contracting. Although the director had review and approval authority, very few agreements were sent by agencies to the department. We estimate that only 300 contracts were sent annually.

To attempt to provide more guidance and direction to state entities in the area of privatization, the director adopted administrative procedures, which became effective January 1, 1990, to define independent contracts and provide the criteria for reviewing said agreements. As state agencies began the practice of replacing merit system employees with contractors, lawsuits were filed. From 1991 until passage of HB 1212, the department began getting approximately 650 agreements annually for review.

In the spring of 1991 and summer of 1992, state courts including the Supreme Court as well as District Courts invalidated the use of both Section 24-50-128 and the existing Directors Procedures as the legal basis for allowing state agencies to contract for personal services. In the case of CAPE v. Department of Highways, the Supreme Court invalidated the contract Highways had with a private vendor to provide custodial, maintenance and utility services that had previously been performed by personnel system employees. The court found that this contract violated the integrity of the state personnel system and without legislation or administrative rules, which set the criteria to govern the propriety of such contracts, this type of contracting, cannot occur. The result was that Section 24-50-28 could not be used as the basis for privatization.

Thereafter, in the district court case of CAPE v. Department of Personnel in an order issued June 6, 1992, all state personal service agreements authorized by the Director's procedures were rendered invalid. These decisions found that existing statutes and corresponding administrative rules did not authorize contracting for the performance of services presently or historically provided by personnel system employees and that an appropriate statute and/or rules were needed to set out the criteria to govern the propriety of contracting.

During the 1993 session, the legislature addressed this issue by passing HB 1212 effective on April 7, 1993. To implement the new enactment, the Director adopted administrative rules, which became effective on September 1, 1993. This statute and Director's Procedures set the parameters for which personal service agreements are measured and provided an approval basis for these agreements in limited circumstances but not if the agreements will cause the separation of personnel system employees.