



DEC 13 1990

State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH

27602-0629

LACY H. THORNBURG
ATTORNEY GENERAL

December 12, 1990

Mr. David N. Edwards, Jr.
Special Assistant to the President
The University of North Carolina
General Administration
P.O. Box 2688
Chapel Hill, North Carolina 27515-2688

Dear Mr. Edwards:

I respond to your letter of December 11, 1990, in which you ask about the legal propriety of various contract clauses encountered by The University of North Carolina in negotiating the procurement of goods and services and in securing the undertaking of obligations. Specifically, you identify the following types of contract clauses:

- limitations to the contractor's liability for nonperformance;
- waivers of the limits of the University's liability established by the North Carolina Tort Claims Act;
- hold-harmless or indemnification clauses, both in tort and contract, in favor of the contractor;
- acceleration clauses rendering all payments by the University under the instant contract and all other contracts between the parties due upon the contractor's finding of default by the University under the instant contract;
- clauses rendering the contract subject to the laws and the legal forums of a state other than North Carolina, without prior approval from the Attorney General;
- clauses that alter the incidences of North Carolina general law of contracts, such as reducing the time in which to bring an action otherwise prescribed by the North Carolina statute of limitations;

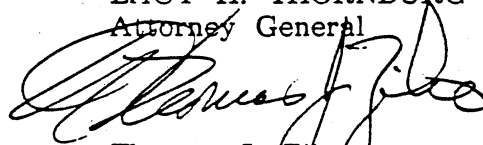
Mr. Edwards
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- binding arbitration clauses and other administrative mechanisms for resolution of disputes not generally available under the laws of this state which tend to abrogate those North Carolina statutes endowing the Attorney General with various powers of representation and settlement in behalf of State agencies;
- clauses authorizing the contractor to assign the right to receive payment from the University under the contract while raising a bar to assertion against the assignee of counterclaims and other defenses with respect to the assignor's deficient performance or nonperformance.

Please be advised that the foregoing types of contract provisions are contrary to public policy as reflected in applicable law and regulations of this State and are, therefore, void. I trust that this response is sufficient for your needs. If not, please let me know.

Sincerely,

LACY H. THORNBURG
Attorney General



Thomas J. Ziko
Special Deputy Attorney General

TJZ/cwh