

The Post and Courier, August 26, 2008.

# High court rebukes DOT

## Agency improperly hired contractor without bids, justices rule

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The Post and Courier

LADSON — The state Transportation Department broke the law four years ago when it used an emergency provision to hire a contractor on the long-delayed Ladson Road project without soliciting bids, the S.C. Supreme Court ruled Monday.

The five-mile stretch of the Ladson Road project was a headache for residents from 2000 to 2004 because the first contractor, Eagle Construction of Newberry, twice missed completion deadlines before the department finally terminated its contract.

The Supreme Court agreed with Ed Sloan, a citizen watchdog from Greenville, who alleged in a lawsuit that no emergency existed to justify the DOT hiring a new company, Sanders Brothers Construction, without soliciting public bids.

"Even though it was a political crisis and a PR fiasco, it was not a case of an emergency," said Jim Carpenter, Sloan's attorney.

Carpenter said the ruling enforces how the highway department can spend taxpayers' money. He said also that he may move to have the Sanders contract, and the warranties that go with it, invalidated to deter it from happening again.

He said that might cost the state more in the short run, but it would have long-term benefits because the state should follow its own bid procedures.

"There has to be consequences to DOT's illegal behavior," Carpenter said.

The Transportation Department declined comment Monday. Its attorneys argued in court that the emergency designation was proper because state statute requires only that the agency director determine an emergency exists and to make the contract public at the department's next meeting.

DOT attorneys argued that the director made the determination because further delays would cause the dangerous work zone to remain for an extra four to six months, the order says.

Carpenter argued that the state should have either placed Eagle in default and turned the project over to the bonding company to finish the project or solicited bids that might have generated a lower cost. Instead, the department agreed to a nearly \$8 million contract with Sanders although approximately \$5 to \$6 million remained unpaid on the Eagle contract, the ruling states.

The Supreme Court sided with Sloan, reversing and remanding an earlier trial court decision. The court noted that the state's procurement code allows emergency procurements only when "there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions."

The court ruled that the hazards had existed throughout the four years of the project and likely would have been present to some degree in any major construction project.

The majority of the court also disagreed with state's attorneys assertions that the case was moot because the contract was finished and that Sloan, a resident of Greenville, had no standing to file the suit.