

7296 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 22, 2002

Robert O. Polk, CFPS
State Fire Marshal
South Carolina Department of
Labor, Licensing and Regulation
Division of Fire and Life Safety
141 Monticello Trail
Columbia, South Carolina 29203

Re: Request for Opinion Concerning the Relationship of Building Codes and Requirements for Licensure for Day Care Facilities

Dear Mr. Polk:

In your above-referenced request, you asked this Office to review a prior opinion issued on October 4, 2001. The opinion was addressed to Danny Phipps, Director of Inspections for the City of Columbia, and concerned the relationship between municipal building codes and ordinances and the rules and regulations promulgated by the State Fire Marshal.

The October 4, 2001 opinion recognized that the State Fire Marshal "... shall have the authority to promulgate fire prevention and protection regulations based upon nationally recognized standards for the protection of life and property of the residents of the State from fire." See S.C. Code Ann. § 23-9-60. The opinion noted that the Fire Marshal has promulgated the authorized regulations, but the opinion also recognized that the regulations acknowledge the existence of potential conflicts of interest between the Fire Marshal's regulations and other standard safety codes. To resolve the potential conflicts, the regulations provide:

No provision of this subarticle shall apply to the extent that it is in conflict with ... any provision of any building or other code duly adopted by ordinance of a municipality, or any duly adopted ordinance of a municipality. In the event of a conflict, such ... ordinance shall apply in all respects.

See S.C. Code Ann. Reg. 71.8300.15.

It is against this background that we considered the general question, "[d]oes this mean that since the City of Columbia has adopted State mandated Codes, by ordinance, the Fire Marshal's

Respectfully,

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Office Rules and Regulations do not apply to the City.” Given the referenced statutes and regulations, we opined that “... because the City of Columbia has adopted State mandated codes by ordinance, the conflicting provisions of the Fire Marshal’s Regulations do not apply to the City” In the general sense, this remains the opinion of this Office.

When addressing the specific question of the application of the Fire Marshal’s regulations to day care facilities located in municipalities, however, additional statutes and regulations must be considered. It must be recognized that there is a distinction between a certain facility’s approval for a municipal business license and the licensure of a day care facility located within a municipality. While a municipality may set standards for business licenses, including those for day care facilities, the South Carolina Department of Social Services (DSS) is the final authority on licensing the business as a day care center capable of operation in the State of South Carolina. DSS licenses and regulates day care facilities on a statewide basis pursuant to S.C. Code Ann. § 20-7-2700 *et. seq.* Specifically, S.C. Code Ann. § 20-7-2980 authorizes DSS to promulgate regulations related to the operation of such facilities. Pursuant to this authority, DSS has set forth a number of regulations. With reference to fire safety, the following regulation has been promulgated:

Private and public child day care centers shall comply with the regulations and codes of the State Fire Marshal.

See S.C. Code Ann. Regs. 114-504(K). In essence, DSS has adopted the Fire Marshal’s regulations as their own with regard to day care facilities.

Generally, courts, as well as this Office, must as a matter of law afford considerable latitude to an agency's discretion in promulgating regulations. See OPS. ATTY. GEN. Dated August 21, 1991 & November 27, 1995. Such regulations are deemed to stand unless they are clearly in contravention of or lacking in statutory authority or are inconsistent with the federal or state Constitutions. *Id.* An agency's regulations carry with them a presumption of validity. U.S.C. v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978). Further, an administrative regulation is deemed valid as long as it is reasonably related to the purpose of the enabling legislation. Hunter and Walden v. S.C. State Licensing Board for Contractors, 272 S.C. 211, 251 S.E.2d 186 (1978).

The Legislature’s stated purpose for the licensure and regulation of day care facilities in South Carolina is found in S.C. Code Ann. § 20-7-2710(a) where it is stated:

The intent of this subarticle is to define the regulatory duties of government necessary to safeguard children in care in places other than their own homes, insuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this subarticle to establish statewide minimum regulations for the care and protection of children in child day care facilities, to insure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities.

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It shall be the policy of the State to insure protection of children under care in child day care facilities, and to encourage the improvement of child day care programs.

Clearly, a regulation requiring day care facilities to comply with the regulations and codes of the State Fire Marshal furthers the goal of safeguarding children in such facilities. Further, this requirement does not appear to be in contravention of any other statutory or constitutional provision. Therefore, the DSS regulation requiring day care facilities to comply with the Fire Marshal's regulations and codes must be presumed valid. Further, as DSS regulations apply state-wide, it is my opinion that they are applicable whether a day care facility is located within a municipality with its own building codes and ordinances or in an unincorporated area of a county.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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