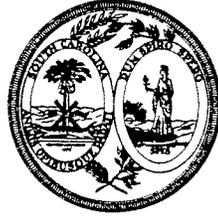


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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 31, 2000

Ernest J. Berger  
Town Councilman  
2001 Seabrook Island Road  
Seabrook Island, South Carolina 29455

**RE: Informal Opinion**

Dear Mr. Berger,

Thank you for your letter of August 24, 2000, requesting an opinion of the Office of the Attorney General. You ask about the authority of local governments to issue certificates of occupancy following the inspection of a building in your town.

By way of background you provide the following information: The town of Seabrook Island has contracted with the County of Charleston to provide inspections of premises on Seabrook Island. The building officials from Charleston County perform the inspections and then send the certificate of occupancy [CO] to the town. The town administrator holds the CO until they have received the "as built survey," which proves compliance with the set back requirements. The town administrator then signs and forwards the CO to the resident. In an effort reduce exposure to potential liability, the town of Seabrook Island has considered a new ordinance in which the Town would issue the CO directly. The County of Charleston would continue to perform the inspections and would send the town a "certificate of building code compliance," but only the Town itself would issue the CO and only after it also received the "as built" survey. Based upon this background information you question whether such an ordinance would be valid.

Pursuant to South Carolina Code of Laws Section 6-9-50, municipalities and counties are required to adopt the latest versions of nationally recognized building codes, unless they submit any modifications due to local conditions to the Building Codes Council for its approval. See S.C. Code Ann. § 6-9-60. We are advised that Charleston County has indeed adopted the latest version of the Standard Building Code. Furthermore, pursuant to S.C. Code Ann. § 6-9-20, municipalities may contract with other governmental entities to provide the services to enforce the building codes. Consequently, the Town of Seabrook Island is certainly authorized to contract with Charleston County to provide Seabrook Island's inspections, but by engaging Charleston County's services Seabrook Island is implicitly accepting the latest versions of the building codes that Charleston

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County has adopted. As such, Seabrook Island is also bound by the provisions of the Standard Building Code.

Section 106.1.1 of the Standard Building Code states:

A new building shall not be occupied or a change made in the occupancy, nature or use of a building or part of a building or part of a building until *after the building official has issued a certificate of occupancy*. Said certificate shall not be issued until all required electrical, gas, mechanical, plumbing and fire protection systems have been inspected for compliance with the technical codes and other applicable laws and ordinances released *by the building official*. (Emphasis added)

Section 106.1.2 further provides:

Upon satisfactory completion of construction of a building or structure and installation of electrical, gas, mechanical and plumbing systems in accordance with the technical codes, reviewed plans, and specifications, and after the final inspection, *the building official shall issue a certificate of occupancy* stating the nature of the occupancy permitted, the number of persons for each floor when limited by law, and the allowable load per square foot for each floor in accordance with the provisions of this code. (Emphasis added)

The 2000 International Building Code, which will go into effect next year as the latest version available to local jurisdictions for adoption, contains even more direct language:

*After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy. . . .* (Emphasis added)

The question of whether an entity which does not perform an inspection can issue a certificate of occupancy turns on the interpretation of the emphasized language above.

A number of basic principles of statutory interpretation are relevant to your inquiry. First and foremost, is the long-recognized tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, the context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948).

The General Assembly's purpose in requiring the adoption of recognized building codes is for the protection of the health, safety, and welfare of the public. See S.C. Code Ann. § 6-9-5. The statutes provide for consistency and reliability through a uniform set of standards found in the

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building codes. The plain and ordinary language of Section 106.1.1 of the Standard Building Code states that the building official issues the certificate of occupancy. The section repeats the terms "building official" as the one who performs the inspections. Again, Section 106.1.2 states that "the building official shall issue a certificate of occupancy." Finally, the 200 International Building Code, perhaps in an attempt to clarify this concern, says "after the building official inspects...the building official shall issue a certificate of occupancy." The repeated use of "the building official" with no reference to any other entity suggests that the codes require the same official who performs the inspection to also issue the certificate. This interpretation not only provides for consistent guidelines for inspectors to follow but also provides for consistency in the application of the guidelines. If the official who performs the inspection is the same building official responsible for issuing the certificate of occupancy, there is little question of whether the inspection was actually performed and who actually performed it. This interpretation also conforms to the protective nature of the statutes by ensuring that only competent officials certify the safety of a building.

As a final note, it is also our understanding that the Building Codes Council at the Department of Labor, Licensing, and Regulation concurs that the language of the Standard Building Code and the 2000 International Building Code requires the same official who performs the inspection to issue the certificate of occupancy. As a matter of policy, this Office typically defers to the administrative interpretation by the agency charged with enforcement of the statute in question. The agency's interpretation is entitled to respectful consideration and should not be disregarded absent cogent reasons.

In sum, in response to your inquiry, the certificate of occupancy should be issued only by the official performing the inspection and should not be issued by an entity wholly disconnected from the performance of the inspection. As you have noted, any attempts to do so in your town's proposed ordinance would, in our opinion, contravene the building code requirements and further expose your town to liability.

This letter is an informal opinion only. It has been written by a designated Senior 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General