

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

October 29, 1986

Mr. James M. Herring
City Attorney
Herring & Meyer, P.A.
Attorneys at Law
Post Office Drawer 5909
Hilton Head Island, South Carolina 29938

RE: Modular Buildings Construction Act
(Section 23-43-10, et seq., of the 1976 Code, as amended).

Dear Mr. Herring:

Your recent letter to Mr. Robert D. Cook of this Office has been referred to me for reply. Please address any future correspondence in this matter directly to me.

In your letter, you request our review of the provisions of the Modular Buildings Construction Act (Section 23-43-10, et seq., of the 1976 Code, as amended), which was enacted as Section I of Act 481 of 1984. You observe that Section 2 of Act 481 thereafter contains the revised Building Codes Council Act (Section 6-9-10, et seq.), which, in pertinent part, states that "[t]he provisions of this chapter are cumulative to other authority of counties and municipalities and do not limit the authority of counties and municipalities...." Section 6-9-100. Accordingly, your argument, as I understand it, is to the effect that Section 6-9-100 is the "last expression" of the legislative will and, therefore, is entitled to deference over prior enactments such as the Modular Buildings Construction Act.

A closer examination of the provisions of the Building Codes Council Act, supra, reveals that the cited language of Section 6-9-100 was part of the originally enacted legislation which established the Council and required variations and modifications from the authorized codes to be approved, when appropriate, by the Council. As to Section 6-9-100 specifically, the repassage of the entire Act in revised form in Act 481 only effected grammatical changes which did not alter the substance of the

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section. Furthermore, it is apparent from a reading of the Building Codes Council Act as a whole that the authority delegated therein to the counties and municipalities to adopt, in their discretion, those nationally recognized codes was to be considered as cumulative to existing authority vested in such governmental entities. In our view, there is nothing inconsistent in the General Assembly's subsequent enactment of the Modular Buildings Construction Act. In that Act, a statewide system incorporating the Standard Building Code and nationally recognized codes as identified by Section 6-9-60 was established, thereby effectuating the stated policy and purpose found in Section 23-43-30, which declares:

It is the policy and purpose of this State to provide protection to the public against possible hazards and to promote sound building construction and for that purpose to forbid the sales, rental, and use of new modular building units which are not so constructed as to provide safety and protection to their owners and users. Because of the nature of the construction of modular building units, their assembly and use and that of their systems, including heating, cooling, plumbing, and electrical which may have concealed parts, there may exist hazards to the health, life, and safety of persons or property which are not easily ascertainable by purchasers, users, and local building officials.

The General Assembly went on to expressly provide in Section 23-43-130:

Modular building units bearing evidence of listing must be acceptable in all localities as meeting the requirements of this chapter and must be acceptable as meeting the requirements of safety to life, health and property imposed by any ordinance of any local governments if such units are erected or installed in accordance with all conditions of the listing. Local land use and zoning requirements, fire zones, building setback requirements, site and rear yard requirements, site development requirements,

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property line requirements, subdivision control and on-site installation requirements, as well as the review and regulation of architectural and aesthetic requirements, are specifically and entirely reserved to local authorities. Such local requirements and rules which may be enacted by local authorities must be reasonable and uniformly applied and enforced without any distinction as to whether a building is a conventionally constructed or industrialized building. Unlabeled units constructed are subject to full inspection for local requirements and for compliance with the regulations of the Council. All local building officials shall enforce the provisions of this chapter and applicable regulations. In localities with no building official, the State Fire Marshal, the Building Code Council, or the South Carolina Residential Homebuilders Commission, within its authority, shall enforce. [Emphasis added.]

When read together in this manner, it appears that there is nothing inconsistent on the face of the respective statutes. On the other hand, applying the construction you suggest would render the Modular Buildings Construction Act's statewide program a nullity inasmuch as each and every municipality and county could disregard or alter applicable construction requirements. Clearly, such was not the intention of the legislature as evidenced by the unambiguous language of Section 23-43-30 and Section 23-43-130 quoted above. Accordingly, it appears certain that counties and municipalities may not contravene or otherwise circumvent the provisions of the Modular Buildings Construction Act through the passage of conflicting requirements of local applicability. Of course, if municipalities and local governments feel stricter standards are necessary or warranted, legislative clarification or amendment may be deemed desirable.

Concerning your equal protection question, our research has disclosed no cases specifically on point. Accordingly, we must presume the constitutionality of the legislation until a court of competent jurisdiction determines otherwise. See, Op. Atty. Gen., May 15, 1986. However, as referenced above, in recognizing the general need to protect the public against possible hazards and to promote sound building construction practices, the General Assembly specifically found the need to provide special attention

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to the modular buildings construction industry due to the nature of the construction of such units. Section 23-43-30. Because the nature of construction of modular buildings differs from that of stick-built buildings, the General Assembly treated such buildings differently by prohibiting discrimination against modular buildings by local officials. Sections 23-43-100 and 23-43-130. Courts have recognized that in this area there must be only minimal rationality and have upheld separate classifications with respect to modular homes. Horizon Concepts, Inc. v. City of Balch Springs, 789 F.2d 1165 (5th Cir. 1986); cf., Campbell v. Monroe County, 426 So.2d 1158 (Fla. 1983).

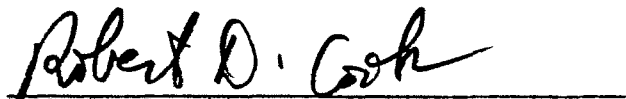
I trust the preceding discussion answers your questions, however, if any further explanation or assistance is required, please do not hesitate to contact me.

Very truly yours,


Richard P. Wilson
Assistant Attorney General

RPW:bvc

RECEIVED AND APPROVED BY:


ROBERT D. COOK
Executive Assistant for Opinions