

1983 WL 181809 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 21, 1983

**\*1 SUBJECT: Residential Home Builder's Commission; Duties of County Building Official Pursuant to Rule 106-11, 'Duties of Local Officials' of the South Carolina Residential Home Builder's Commission**

Pursuant to the above-cited Rule, building officials of a county charged with a duty of issuing building or similar permits are not required to comply with the provision of Rule 106-11.

Executive Director  
South Carolina Residential Home Builders's Commission

DISCUSSION:

You have referred to this Office a question regarding Rule 106-11 of the rules and regulations of the South Carolina Residential Home Builder's Commission, which Rule is found in Volume 27 of the CODE OF LAWS OF SOUTH CAROLINA (1976). Specifically, this Rule provides in pertinent part:

'It shall be the duty of the building official, or other authority charged with the duty of issuing building or other similar permits, of any incorporated municipality or subdivision thereof to refuse to issue a permit for any undertaking which would classify the applicant therefor as a residential contractor under the provisions of this Chapter unless the applicant has furnished evidence that he is either licensed as a residential home builder or a general contractor as required by this Chapter or exempt from the requirements thereof.' (emphasis added)

QUESTION:

Does Rule 106-11 require county building officials who issue building permits to refuse to issue such a permit to an applicant who is not licensed as a residential home builder pursuant to [Section 40-59-70 CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#)?

OPINION:

No.

DISCUSSION:

This Rule places an affirmative duty only on officials of an incorporated municipality or subdivision thereof, and requires no action by county officials. The term 'municipal government' has been construed to relate to counties and their governmental affairs, [Carroll v. York](#), 109 S.C. 1, 95 S.E. 121 (1918); [Gaud v. Walker](#), 214 S.C. 451, 53 SE2d 316 (1949). However, the term 'municipal government' has been held not to apply to 'incorporated municipalities.' [Ruggles v. Padgett](#), 240 S.C. 494, 126 SE2d 553 (1962). Accordingly, actions required by this statute only of officials of 'incorporated municipalities' are not required of county officials.

Further, [Article 8, Section 7 of the South Carolina Constitution](#) provides, in pertinent part:

'The General Assembly shall provide by general law the structure, organization, powers, duties, functions, and the responsibilities of counties. . . .'

Nowhere in Rule 106-11 are any duties of county officials prescribed. In the case of [Williams v. Wiley, 217 S.C. 247, 60 SE2d 586 \(1950\)](#), the Court held:

'A county has only such powers and can perform such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provisions. A county is a quasi-corporation and a governmental agency of the State, with no independent sovereignty, and any powers not expressly conferred upon it are just as plainly prohibited as though expressly forbidden.' [217 S.C. 247, 248; 60 SE2d 586, 587.](#)

CONCLUSION:

\*2 It is the opinion of this Office that Rule 106-11 has no application to county building officials because no powers or duties in connection with this Rule have been imposed or conferred upon them by the Constitution or the Legislature.

John M. Cox  
Assistant Attorney General

1983 WL 181809 (S.C.A.G.)