

1972 WL 25348 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1972

*1 Mr. Melvin L. Roberts
Attorney at Law
Post Office Box 460
York, South Carolina 29745

Dear Melvin:

I have talked with Paul Infinger, Attorney, Division of General Services, under which the Fire Marshal's office comes, with respect to the matter you called me about on the telephone. Their position is that the Fire Marshal has authority to promulgate rules and regulations under Section 37-82.1, 'based upon nationally recognized standards.'

The Fire Marshal has promulgated such rules and regulations by adopting the Fire Prevention Code of the American Insurance Association, 1970 Edition. Section 16-75(f)(1), page 138, provides that the special dispensing devices may be permitted, 'provided there is at least one qualified attendant on duty while the station is open to the public.'

It appears to me that the Fire Marshal undoubtedly has authority to promulgate such rules and the only remaining question you are concerned with is whether or not they are arbitrary or discriminatory. I am sorry to see you get caught into a bind but I think the Fire Marshal has authority to do what he has done, and, if I may offer this, it appears that the only remedy would be to bring a declaratory action to determine if the regulations are valid. This, of course, is completely in your discretion.

It was a pleasure to hear from you and I regret that you find yourself caught in administrative law.

With best regards,
Cordially,

Daniel R. McLeod
Attorney General

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