

7304 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 17, 2004

Kelly F. Zier, Esquire
North Augusta City Attorney
Post Office Box 6516
North Augusta, South Carolina 29841

Dear Mr. Zier:

In a letter to this office you requested an interpretation of S.C. Code Ann. Section 40-59-300 (Supp. 2003) which states:

Notwithstanding any other provision of law, a 501(c)(3) eleemosynary organization may construct a residential home with volunteer labor without the presence of a qualifier if the home without consideration is to be transferred to or made available for the use of an underprivileged or low-income family or individual. "Qualifier" for purposes of this provision means a builder or specialty contractor licensed to perform the particular work being done on the site. The cost of the building permit must be borne by the 501(c)(3) organization.

The question has been raised as to whether such provision would allow Habitat for Humanity, a 501(c)(3) organization, to construct a residential home without the presence of a "qualifier", a licensed contractor. You have particularly questioned whether a Habitat for Humanity home is transferred "without consideration" for purposes of Section 40-59-300.

In reviewing your question, several basic rules of statutory construction are pertinent. First is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute, therefore, must receive a practical, reasonable and fair interpretation consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C.337, 47 S.E.2d 788 (1948). However, the Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). As stated by the Court,

(i)t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is

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an old and well established rule that the words ought to be subservient to the intent and not the intent to the words.

Id. at 368-369.

In reviewing your question, consideration must be given to the manner in which Habitat for Humanity operates. You indicated that the local Habitat unit, following the completion of a Habitat home, transfers such home which is encumbered by two mortgages. One of the mortgages is for the costs involved in building the home, such costs including the land, materials, etc. A second mortgage is a mortgage that covers the difference between the costs and the appraised value of the completed building being transferred. This second mortgage is excused at the rate of 1/20 per year while the first mortgage is paid by the grantee. Such manner of operation distinguishes the Habitat for Humanity program from that of traditional home sales inasmuch as the mortgages serve only to recoup the costs involved in building the home and do not, according to our understanding, involve any profit for Habitat for Humanity. Therefore, Habitat for Humanity homes are not therefore sold in the traditional sense. Moreover, consistent with the Greenville Baseball decision referenced above, nothing in the statutes indicates that it was the intent of the General Assembly to effectively end the manner of operation for Habitat for Humanity where it is our understanding that the homes are typically built without the presence of a qualifier.

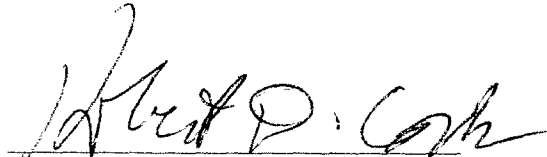
Consistent with such understanding, in our opinion, the manner of operation set forth above does not involve the transfer of the home with consideration. As a result, it is the opinion of this office that Habitat for Humanity, a 501(c)(3) organization, may construct a home without the presence of a qualifier inasmuch as the home is transferred without consideration.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General