



ALAN WILSON  
ATTORNEY GENERAL

November 29, 2011

The Honorable Glenn G. Reese  
Senator, District No. 11  
502 Gressette Senate Office Building  
Columbia, SC 29202

Dear Senator Reese:

It is our understanding from your letter to this office and our telephone conversations with you that the Spartanburg County Fire Marshal and a Spartanburg County Codes inspector have approved an existing building in Spartanburg County for Certificate of Occupancy for use as a senior citizens' day care facility, and they have determined that an automatic sprinkler system is not necessary. On behalf of a constituent, you ask for an opinion of this office as to whether an automatic sprinkler system is necessary, and whether the South Carolina Department of Health and Environmental Control ("DHEC") has authority to require an automatic sprinkler system to be installed before a license is issued to the senior citizens' day care facility.

#### Law/Analysis

Before considering the question at hand, it is pertinent to discuss the statutory law and regulations applicable to adult day care facilities and building codes. Chapter 9 of title 6 of the South Carolina Code governs building codes. These provisions establish a South Carolina Building Codes Council (the "Council"), which is authorized in S.C. Code Ann. §6-9-40 "to review, adopt, modify, and promulgate the building codes referenced in Section 6-9-50. . . ." Prior to 2003, the building code statutes required all municipalities and counties to adopt by reference the latest version of the building codes published or made available by Southern Building Code Congress International, Inc. See §§6-9-10; 6-9-50 (2004). In 2003, the Legislature amended these provisions and instead of requiring adoption of the Southern Building Code Congress International, Inc.'s building codes, these provisions now require municipalities and counties to enforce the building code as adopted by the Council. Pursuant to §6-9-50, the Council is required to adopt by reference the latest editions of certain nationally recognized codes and standards published by the International Code Council, Inc. See Op. S.C. Atty. Gen., July 5, 2006 [discussing the licensure of child day care facilities]. We understand the latest version of the codes and standards published by the International Code Council, Inc. adopted by the Council is the 2006 International Building Code (the "Code").

We note also that Spartanburg County Code §10-81 provides:

[e]ffective on July 1 of each year, the latest edition of the building, residential, gas, plumbing, mechanical, fire, and energy codes as promulgated, published,

or made available by the International Code Council, Inc. and the National Electrical Code as published by the National Fire Protection Association are hereby adopted and on file in the office of the council clerk, together with any special provisions approved by the state building code council, are hereby adopted by reference and incorporated into this article as if set forth at length in this section. The provisions therein shall be controlling within the county coming under the purview of this article . . .

The Legislature's purpose in requiring the adoption of recognized building codes is for the protection of the health, safety, and welfare of the public. See §6-9-5. We further explained in the July 5, 2006, opinion that:

. . . from our reading of the building code statutes contained in chapter 9 of title 6, we also recognize the purposes of these provisions and their requirements indicate the Legislature's recognition that the building codes are also an area of the law requiring statewide uniformity. The fact that the Legislature designated the Council as the only body in the State with the authority to review, adopt, modify and promulgate a statewide set of building codes; requires the Council to adopt the Code, and requires all municipalities and counties to enforce the Code, indicates its desire for uniformity with regard to building code laws. See S.C. Code Ann. §§6-9-40; 6-9-10.

Additionally, the Office of the State Fire Marshal has established statewide building construction safety standards under a delegation of authority by the Legislature. The State Fire Marshal's standards include comprehensive codes and standards of fire prevention, fire protection and building construction. Pursuant to §23-9-60:

[t]he State Fire Marshal shall require conformance with the fire prevention and protection standards based upon nationally recognized standards as may be prescribed by law or regulation for the prevention of fires and the protection of life and property. The Division of the State Fire Marshal shall have the authority to promulgate fire prevention and protection regulations based upon nationally recognized standards for the protection of life and property of the residents of the State from fire.

These Regulations detail the specifics of the fire prevention requirements and their relationship to nationally recognized standards. Specifically, 26 S.C. Code Ann. Regs. 71-8300.2.A (Supp. 2010) provides that the requirements of the [Code], 2006 Edition . . . shall constitute the minimum standards for fire prevention and life safety for construction, occupancy, and use of all buildings and structures . . ."<sup>1</sup>

Reg. 71-8300.1.D [Existing Buildings] provides as follows:

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<sup>1</sup>In 2010, the State Fire Marshal's Office adopted the 2009 version of the Code. In checking with the State Fire Marshal's Office, we learned the 2009 Code is currently applied only to state-operated buildings.

1. Existing buildings, structures, or premises shall be permitted to continue in operation under the code the buildings, structures, or premises were constructed unless addressed by these regulations or state statute.
2. Alterations, repairs, additions, and rehabilitation to an existing building or structure, shall fully comply with the current codes for new construction when one of the following occurs:
  - a. The cost of construction exceeds fifty percent of the building value before the construction.
  - b. The building is damaged by fire, natural disaster, or otherwise, in excess of fifty (50) percent of the building value before such damage.
  - c. The building is moved into or within the state, excluding modular structures regulated by the Manufactured Housing Board.
3. Buildings, structures, or premises reopened after being vacant for more than one (1) year shall be considered new construction and must conform to the current codes for new construction.
4. If the occupancy classification or sub-classification of an existing building changes, the building shall conform to the current code for new construction.
5. If the occupancy classification or sub-classification of a portion of an existing building changes, that portion of the existing building shall conform with the current code for new construction or be separated per the adopted [Code].

The State Fire Marshal's Regulations do, however, acknowledge the existence of a potential conflict between the Regulations and other standard safety codes. To resolve these conflicts, Reg. 71-8300.1.C.3 states:

[t]hese regulations shall not conflict with any state statute, code, or ordinance adopted pursuant to Title 6, Chapter 9 of the South Carolina Code by any municipality or political subdivision. In the event of a conflict, such statute, code, or ordinance shall apply. These regulations shall apply to state, county, municipal, and private buildings, structures, or premises unless excluded by these regulations or state statute.

In an opinion dated October 4, 2001, we addressed a conflict between the more restrictive requirements of the Standard Building Code, adopted by the City of Columbia by ordinance, and the State Fire Marshal's Rules and Regulations, as they pertained to existing child day care centers. Specifically, the requester explained the major difference between these authorities is that "the Standard Building Code

is more restrictive. . .” than the State Fire Marshal’s Regulations. Given the above-referenced statutes and regulations, we opined that “. . . because the City of Columbia has adopted State mandated codes by ordinance, the conflicting provisions of the Fire Marshal’s Regulations do not apply to the City; instead, the City’s duly adopted standard safety code provisions control.” In 2002, we addressed an issue similar to that in the 2001 opinion concerning the relationship between Department of Social Services regulations requiring a day care facility to comply with the Rules and Regulations promulgated by the State Fire Marshal and local building codes, which the City of Columbia adopted pursuant to an ordinance. We noted the 2001 opinion, stating “[i]n the general sense, this remains the opinion of this Office.” Op. S.C. Atty. Gen., July 22, 2002.

The International Code Council, Inc. has promulgated and published a full set of international building codes regulating various structural and mechanical aspects of various types of buildings. See <http://www.ecodes.iccsafe.org>. The intent of the Code is “to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.” See International Code Council, Inc., §101.3. The Code breaks buildings down into classifications based upon use and occupancy.

Your letter refers to an existing building to be used as a senior citizens’ day care facility. The Code defines Institutional Group I-4 adult care facilities to include “[a] facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services . . .” See id. at §308.5.1. The Code regulates fire protection systems of Group I-4 day care facilities, specifically requiring that “[a]n automatic sprinkler system shall be provided throughout buildings with a Group I fire area.” Id. at §903.2.5.<sup>2</sup> In our review of the Code, we observe that a Group I-4 Code classification generally subjects a building to greater restrictions in areas concerning fire protection than other occupancy classifications under the Code. See, e.g., id. at §705.4 [fire-resistance rating for fire walls]; id. at §803.5 [requirements for interior walls].

We do observe that the Code establishes an “exception” to an adult care facility I-4 classification. The Code provides: “[a] facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group A-3.” Id. at §308.5.1; see id. at §303.1 [listing Assembly Group A classifications]. The Code states that an automatic sprinkler system is required for Group A-3 occupancies, where one of the following conditions exists: (1) the fire area exceeds 12,000 square feet (1115 m<sup>2</sup>), (2) the fire area has an occupant load of 300 or more, or (3) the fire area is located on a floor other than the level of exit discharge. Id. at §903.2.1.3. Otherwise, it appears an automatic sprinkler system is not required in a Group A-3 classification. When an automatic sprinkler system is required for Group A-3 occupancy, however, it “shall be provided throughout the floor area

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<sup>2</sup>Section 308.5 of the Code provides that a day care facility accommodating five or fewer persons for less than 24 hours would be classified as Group R-3 occupancy. See id. at §310.1 [“Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I,” including buildings that do not contain more than two dwelling units, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours].

where the [Group A-3] occupancy is located, and in all floors between the Group A occupancy and the level of exit discharge.” See *id.* at §903.2.1.

Further, DHEC is authorized to regulate and license day care facilities for adults pursuant to §44-7-260 (A). A “day-care facility for adults” is defined in §44-7-130(7) to mean: “a facility for adults eighteen years or older which offers in a group setting a program of individual and group activities and therapies. The program is directed toward providing community-based care for those in need of a supportive setting for less than twenty-four hours a day, thereby preventing unnecessary institutionalization, and shall provide a minimum of four and a maximum of fourteen hours of operation a day.”

Pursuant to §44-7-250, DHEC “shall establish and enforce basic standards for the licensure, maintenance, and operation of health facilities and services to ensure the safe and adequate treatment of persons served in this State.” DHEC is authorized under §44-7-260 (C) “to investigate, by inspection or otherwise, any [day care facility for adults] to determine if its operation is subject to licensure.” Section 44-7-290 states:

[DHEC] may not issue licenses for the operation of [a day care facility for adults] or services subject to this article unless the facility and persons named in the application are found to comply with the provisions of this article and [DHEC’s] regulations.

This office “generally gives deference to an administrative agency’s interpretation of an applicable statute or its own regulation.” *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E.2d 836, 838 (2003); see *Ops. S.C. Atty. Gen.*, January 23, 2009; August 21, 1991; May 1, 1990. “Construction of a statute by the agency charged with executing it is entitled to most respectful consideration and should not be overruled without cogent reasons.” *William C. Logan & Associates v. Leatherman*, 290 S.C. 400, 351 S.E.2d 146, 148 (1986); see *Op. S.C. Atty. Gen.*, July 27, 2006 [deferring to DHEC’s interpretation of §47-5-60 that only a licensed veterinarian may administer a rabies vaccine].

Under its authority, DHEC mandates compliance with specific standards set forth in 25 S.C. Code Ann. Regs. 61-75 (Supp. 2010) to gain licensure as a day care facility for adults. Specifically, Reg. 61-75(I) [“Fire Protection and Prevention”] provides as follows:

(1) Fire Extinguishers, Standpipes, and Automatic Sprinklers: Fire-fighting equipment such as fire extinguishers, standpipes and automatic sprinklers shall be provided as required by the Standard Building Code. Extinguishers shall be sized, located, installed and maintained in accordance with NFPA No. 10. Suitable fire extinguishers shall also be installed in all hazardous areas. Each facility shall conform with all state and local fire and safety provisions.

The DHEC Regulations state “minimum requirements” set forth in the Standard Building Code must be met regarding the design and construction of these facilities. See Reg. 61-75(H) (3) (c). We note, however, that the Southern Building Code Congress International, Inc., which published the Standard Building Code, along with several other regional building code organizations, formed the International

Code Council in 1994 to develop a single set of comprehensive and coordinated national model construction codes. The provisions of these regional codes were thereafter incorporated into the single Code, which contains the most modern, up-to-date code provisions of the building codes. See Mechanical Contractors of Alaska, Inc. v. Dept. of Public Safety, 91 P.3d 240 (Alaska 2004). As a result of the merger, it is our understanding the Standard Building Code has been discontinued and that the 1999 version was the last publication.

As previously stated, the Legislature's purpose in requiring the adoption of the Code was to establish consistency and reliability through a uniform set of standards for the protection of the health, safety, and welfare of the public. Given that Reg. 61-75(H) [Local and State Codes and Standards] also requires that DHEC "[day care facilities for adults] shall substantially comply with pertinent local and state laws, codes, ordinances and standards with reference to design and construction . . . [,]" we therefore conclude that DHEC is authorized to regulate the design and construction of these facilities consistent with the standards of the Code set forth above.<sup>3</sup>

#### Conclusion

The Code is recognized as the statewide building code standard. DHEC, which is authorized to regulate and license day care facilities for adults, requires that automatic sprinklers must be provided as determined by the local and state building code standards. Thus, a building used as a senior citizens' day care facility must satisfy the standards of the Code regarding fire protection systems in order to meet DHEC's licensure requirements pertaining to the facility. The Council, the State Fire Marshal, and the Spartanburg County Code have also adopted the Code as the minimum building code standard for an adult day care facility. The Code requires a Group I-4 adult care facility, *i.e.*, a facility that provides supervision and personal care for more than five unrelated adults for less than 24 hours, to have an automatic sprinkler system throughout buildings with a Group I fire area. The only exception in the Code, under limited circumstances, is an adult care facility where persons are otherwise capable of responding to an emergency situation without physical assistance from the staff. If there are any persons in an adult care facility at any time who might otherwise be unable to respond in the event of an emergency situation, then we believe such a facility would be classified Group I-4 under the Code. However, we are unable to specifically determine whether the senior citizens' day care facility about which you inquire is required to have an automatic sprinkler system, because to do so requires us to evaluate and determine factual issues regarding the operation of the facility which are beyond the scope of an opinion of this office. See, e.g., Op. S.C. Atty. Gen., November 28, 2005; see also Op. S.C. Atty. Gen., April 6, 2006 ("[T]he investigation and determination of facts are matters beyond the scope of an opinion of this office"). This office is only able to provide an interpretation of relevant law. Given the significant regulatory authority that has been given to DHEC regarding day care facilities for adults, it would be advisable to consult with DHEC to ensure compliance with its regulations, as well as all permitting requirements. Because we believe DHEC to be in the best position to make a determination to license the senior citizens' day care facility, this office would defer to DHEC for its application of the relevant regulations in this regard.

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<sup>3</sup>In a telephone conversation with a DHEC representative, we were informed that DHEC currently enforces the Code with regard to day care facilities for adults.

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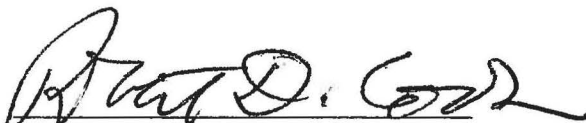
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General