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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 4, 2001

Donny Phipps, Director of Inspections
City of Columbia
P.O. Box 147
Columbia, South Carolina 29217

RE: Informal Opinion

Dear Mr. Phipps:

By your letter of September 10, 2001, you have requested an opinion from this Office concerning conflicts between the requirements of the Standard Building Code and the State Fire Marshal's Rules and Regulations. By way of background, you provide the following information:

All counties and municipalities in the state of South Carolina that enforce building codes, by ordinance, are required by state law to enforce the Standard Codes. The State Fire Marshals Office in addition to the Standard Codes have their own rules and regulations to enforce. There are not many differences between the two but there is a problem when reviewing and inspecting child day care centers.

The two major differences are that the Standard Building Code is more restrictive with the number of children allowed in certain occupancies and the Standard Building Code does not require retrofitting of existing day care centers. . . .

You ask, "Does this mean that since the City of Columbia has adopted State mandated Codes, by ordinance, the Fire Marshal's Office Rules and Regulations do not apply to the City?"

South Carolina Code of Laws Section 23-9-60 grants the Division of the State Fire Marshal the authority to promulgate regulations and ensure their compliance. Section 23-9-60 states:

The 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*

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the protection of life and property of the residents of the State from fire. (Emphasis added)

As the emphasized portion indicates, the State Fire Marshal's regulations detail the specifics of the fire prevention requirements and their relationship to nationally recognized standards. For example, Regulation 71-8300.9 designates certain chapters of the Standard Building Code as the "[m]inimum standards for fire prevention and life safety protection in construction, occupancy, and use of all buildings structures." The regulations do however, acknowledge the existence of a potential conflict between the State Fire Marshal regulations and other standard safety codes. To resolve those conflicts, Regulation 71-8300.15 states:

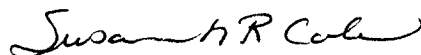
No provision of this subarticle shall apply to the extent that it is in conflict with any statute of this State, any provision of any building or other code duly adopted by ordinance of a municipality, or any duly adopted ordinance of a municipality. In the event of a conflict, such statute, other provision, or ordinance shall apply in all respects.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of SC v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Applying these rules to Reg. 71-8300.15, the provision operates to exempt municipalities from particular provisions of the regulations to the extent they are in conflict with the municipality's own duly adopted ordinances or safety codes. By contrast, in unincorporated areas of a county, in municipalities that have not for some reason adopted the standard safety codes, or in areas that have opted-out of provisions of the standard codes, the State Fire Marshal regulations would apply. Thus, in response to your question, 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.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General