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The State of South Carolina



Office of the Attorney General

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March 8, 1990

The Honorable Glenn F. McConnell
Senator, District No. 41
613 Gressette Building
Columbia, South Carolina 29202

Dear Senator McConnell:

With your letter of February 22, 1990 to Attorney General Medlock, you attached a copy of S.460, a bill presently pending before a subcommittee of the Senate Judiciary Committee. You have asked whether a state mandate that counties adopt and enforce building codes under the direction of the South Carolina Building Codes Council without funding from the State to the counties would be permissible. You further ask, if S.460 is read in light of Section 4-9-50 of the South Carolina Code of Laws, should the funding of state mandated building codes be through the State Appropriations Act?

S.460

The bill denominated S.460 would amend Chapter 9 of Title 6 of the Code to revise the authorization for and scope of building codes and regulations. By the amendments, counties and municipalities would be required to adopt the specified codes; further, counties and municipalities would be required to appoint a building official to perform the necessary inspections and carry out the other prescribed duties and to establish a building inspection department. The South Carolina Building Codes Council would be authorized to grant variances from code provisions, upon application of a county or municipality, if local climatological or physical conditions warrant in the council's judgment. In addition, the council would be required to monitor compliance with the statutory requirements by counties and municipalities.

Section 4-9-50 of the Code

In relevant part, Section 4-9-50 provides:

Whenever the General Assembly shall provide by general law for the use of county personnel, facilities or equipment to implement such general law or rules and regulations promulgated pursuant thereto, the State agency or department responsible for administering such general law shall provide sufficient funds for county implementation from appropriations to that agency of [sic] department... .

Discussion

In interpreting a statute such as Section 4-9-50, it is the primary objective of the courts and this Office to ascertain and effectuate legislative intent if at all possible. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). Where terms of a statute are clear and unambiguous, such terms must be interpreted literally. Anders v. S.C. Parole and Community Corrections Bd., 279 S.C. 206, 305 S.E.2d 229 (1983). Words used in a statute are given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980).

A review of the plain language of Section 4-9-50 reveals that a State agency or department administering a general law as so described must provide funding sufficient for implementation by the counties if the following exist:

1. a general law; and
2. such general law provides for the use of county personnel, facilities, or equipment for implementation.

Clearly, if adopted, S.460 would be a general law, as it would apply to the whole state and to each county in the state with equal force. Peddycoart v. City of Birmingham, 354 So.2d 808 (Ala. 1978). S.460 would require the use of county personnel (building official) and most probably the use of the county facilities for implementation. It would thus appear that the threshold requirements of Section 4-9-50 are met and that an appropriation to the South Carolina Building Codes Council would be required for implementation of S.460.

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S.460 is not an appropriations bill. To comply with Article X, Section 8 of the State Constitution, which mandates that money shall be drawn from the State treasury "only in pursuance of appropriations made by law," funds would have to be appropriated by some proper means as the annual appropriations act.

It must be noted, however, that failure to appropriate funding as required by Section 4-9-50 would not prevent its being effectuated if S.460 should be adopted. In Brooks v. Jones, 80 S.C. 443, 61 S.E. 946 (1908), the court stated:

It is competent for the Legislature, by means of an appropriations act, to increase or lessen the salary of an officer (where there is no constitutional inhibition), provided the intent to do so may be fairly inferred from the language of the statute. [Cites omitted.] When such intention is clearly manifest, the appropriation statute is considered to be in conflict with a previous statute fixing such salary and to operate so as to suspend the previous general statute during the currency of the appropriation statute.

Id., 80 S.C. at 449. See also State ex rel. McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638 (1971) and Op. Atty. Gen. dated October 21, 1976. In an analogous situation, assuming S.460 were adopted prior to the annual appropriations act and assuming further that the appropriations act contained no appropriation for the implementation of S.460, it could be concluded that the terms of Section 4-9-50, as such relate to appropriations for implementation of S.460, would be superseded for the fiscal year 1990-91 by the appropriations act.

The above-referenced opinion of October 21, 1976, interpreted a provision of law requiring all auditors, assessors, and appointed appraisers of an assessor's office to attend educational courses as required by the South Carolina Tax Commission. Application of what is now Section 4-9-50 was considered, as no funds had been appropriated in the appropriation to the Tax Commission for this purpose. While application of the Code section was doubtful (the doubt being as to the use of county personnel, facilities, or equipment being constituted by educational requirements), it was deemed that the failure to appropriate funds would have suspended the operation of what is now Section 4-9-50. A copy of the opinion is enclosed.

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Based on the foregoing, it is the opinion of this Office that Section 4-9-50 of the Code would mandate that funding be provided to the South Carolina Building Codes Council for the implementation of S.460 should the bill be enacted into law. To meet the requirements of Article X, Section 8 of the State Constitution, such appropriation must be lawfully made. If, however, an appropriation should not be forthcoming, the effect would be to suspend the operation of Section 4-9-50 for the current fiscal year (1990-91 in this instance). Counties would thus provide funding as may be required.

With kindest regards, I am

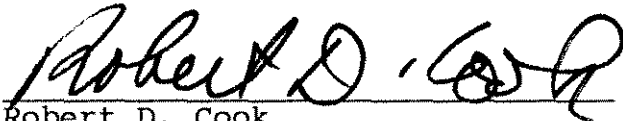
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nw
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
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