

The State of South Carolina



Office of the Attorney General

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September 25, 1989

R. Powell Black
Town Advisor
Town of Jefferson
Post Office Box 306
Jefferson, South Carolina 29718

Dear Mr. Black:

By your letter of August 30, 1989 on behalf of the Town Council of Jefferson, you have asked for the opinion of this Office as to whether an ordinance adopted by Town Council with respect to the abatement of unsafe buildings may be in conflict with the South Carolina Code of Laws. You have indicated that Town Council adopted by reference the Standard Unsafe Building Abatement Code pursuant to Section 6-9-10 et seq. of the Code. However, Section 23-9-150 et seq. gives certain enforcement powers to the State Fire Marshal with respect to unsafe buildings. Your Town Attorney has concurred with your position that the ordinance does not conflict with state law.

You have also advised that the Abatement Code requires a Board of Adjustments and Appeals to be established, to be composed of "... one engineer, one architect, and three members at large from the construction industry." You advise that the Town's population is small and that the Town may not have those professionals among its populace. You indicate that the Town has amended the code by rescinding that one sentence. You feel that you are on safe ground and have asked our opinion on so doing.

Section 6-9-10 of the Code of Laws of South Carolina (1988 Cum. Supp.) provides in relevant part that the governing bodies of incorporated municipalities and counties may adopt

building, housing, electrical, plumbing, and gas
codes relating to the construction, livability,

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sanitation, erection, equipment, alteration, repair, occupancy, or removal of buildings and structures located within its jurisdiction and promulgate regulations to implement the codes.

....

The codes and regulations may only be adopted by reference to national, regional, or model codes listed in §6-9-60 and to certain special provisions approved by the South Carolina Building Code Council... .

Section 6-9-60 provides in relevant part that

Municipalities or counties are authorized to adopt by reference only the latest editions of the following nationally known codes for regulation of construction within their respective jurisdictions: Standard Building Code, Standard Housing Code, Standard Gas Code, Standard Plumbing Code, Standard One and Two Family Dwelling Code, Standard Mechanical Code, Standard Fire Protection Code, Standard Swimming Pool Code, Standard Excavation and Grading Code, National Electrical Code, and National Fire Protection Association Gas Codes. [Emphasis added.]

Since the purpose of adopting the Standard Unsafe Building Abatement Code is to remove unsafe buildings within the corporate limits of the Town rather than to regulate construction within the Town, it is of no moment that the Standard Unsafe Building Abatement Code is not listed in Section 6-9-60. The fact that it is a nationally recognized code from the Southern Building Code Congress is sufficient to permit its adoption by reference under Section 6-9-10 of the Code. The Town of Jefferson would accomplish this Ordinance No. 64, a draft of which you enclosed with your letter.

This Office does not have a copy of the Standard Unsafe Building Abatement Code to review the particular provisions under review but understands that the Code provides that certain officials of the adopting municipality take certain actions with respect to enforcement of the Code, particularly a "Building Official." Within the South Carolina Code, however, the State Fire Marshal is charged with certain responsibilities concerning the demolition or repair of certain unsafe buildings, and you inquire as to any conflict of these duties with the Standard Code.

Section 23-9-150 et seq. provides a procedure for procuring the repair or demolition of unsafe buildings. Section 23-9-150

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states its applicability: "All buildings or structures referred to in § 23-9-40, except single-family dwellings, duplexes or one-story rooming houses, which are unsafe" or meet other specified unsatisfactory conditions are covered by these procedures. The buildings or structures referred to in Section 23-9-40(e) include: "factories, asylums, hospitals, churches, schools, halls, theaters, amphitheatres and all other places in which numbers of persons work, live or congregate from time to time for any purpose." As to those listed places, the State Fire Marshal is given the authority by Section 23-9-150 to enforce the statutes as to unsafe buildings.

When interpreting statutes or ordinances, it is the primary function of the courts and this Office to ascertain and give effect to legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute or ordinance will be given their plain and ordinary meanings. Worthington v. Belcher, 274 S. C. 366, 264 S.E.2d 148 (1980). Legislative acts relating to the same subject matter must be construed together and effect given to both if possible. Gordon v. Bell, 116 S. C. 466, 108 S. E. 186 (1921). In case of conflict between a municipal ordinance and the state constitution or general law, the latter will supersede the former. Central Realty Corp. v. Allison, 218 S. C. 435, 63 S.E.2d 153 (1951).

It is possible to construe both the proposed ordinance and the statutes relative to the State Fire Marshal together, effectuating both without conflict. The duties of the State Fire Marshal would involve unsafe buildings in these categories: factories, asylums, hospitals, churches, schools, halls, theaters, amphitheatres, and "all other places in which numbers of persons work, live or congregate from time to time for any purpose." Section 23-9-40(e) of the Code. Whenever a statute contains a list of items to which a statute is applicable, those items not listed are deemed not to be included. Home Building & Loan Ass'n v. City of Spartanburg, 185 S. C. 313, 194 S. E. 139 (1938). Thus, the State Fire Marshal would not undertake the statutory procedures for repairing or demolishing unsafe buildings for those categories of buildings not listed. Further, Section 23-9-150 specifically excludes single-family dwellings, duplexes, or one-story rooming houses. The Town of Jefferson could therefore adopt an ordinance specifying procedures to be followed within the Town to have repaired or demolished unsafe buildings other than those over which the State Fire Marshal would have jurisdiction. We agree with you and the Town Attorney that the ordinance would not conflict with state law in that respect.

You have advised that you have contacted the State Fire Marshal's office about this matter and were advised that the State Fire Marshal leaves matters relative to the abatement of unsafe

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buildings at the local level, to local authorities inasmuch as he has a limited staff and localized statewide enforcement would be impractical. From that perspective, adoption of an ordinance to abate unsafe buildings at the local level would extend and enhance the protection of public health and safety by complementing the abatement procedures currently available through the State Fire Marshal's office.

Your second question involved an adaptation of the Standard Unsafe Building Abatement Code to fulfill the needs of the Town of Jefferson insofar as the composition of the Board of Adjustments and Appeal is concerned. It appears that such is permissible. 1A Sutherland Statutory Construction 729 (1985 Revision). Because the code in question is not one listed in Section 6-9-60 of the Code relating to construction of buildings, this would not be a change requiring the approval of the South Carolina Building Code Council. Thus, we concur with the conclusion reached by you and the Town Attorney.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be needed. With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

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