The State of South Carolina

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October 20, 1988

Roy D. Bates, Esquire
Columbia City Attorney
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Dear Mr. Bates:

This letter is in response to your request to this office of an opinion as to the interpretation of certain language in section 6-9-60, Code of Laws, South Carolina, 1976, as amended. The relevant portion of that section provides that:

> § 6-9-60 Adoption and modification of certain standard codes by reference; creation, membership, meetings and functions of South Carolina Building Code Council.
>
> * * *
>
> Should any city, town, or county contend that the codes authorized by this chapter do not meet its needs due to local physical or climatological conditions, the variations and modifications must be submitted for approval to a South Carolina Building Code Council.... (emphasis added)
>
> * * *

As stated in your request, the City of Columbia has recently enacted changes to the Standard Building Code and the Standard One and Two Family Dwelling Code that would in effect require all future resident structures, built in the City of Columbia, to have two doors instead of one for greater safety and that these changes were enacted to become effective upon approval of the South Carolina Building Code Council (Council). Further, per your request, you stated that the Council had met to consider the proposed changes, and had indicated that it would not consider the matter in that it was the Council's interpretation that the term "local physical

condition" of section 6-9-60 would only include unique geographical conditions and in the absence of some such distinguishing geographical conditions in Columbia to justify the proposed changes, it was the Council's conclusion that it lacked jurisdiction to act on the City's request.

From a review of the Council's minutes dated January 27, 1988, which you have provided to us, it was agreed by the Council to defer action on the matter until the City of Columbia had obtained an opinion from the Attorney General's Office as to whether or not the language in section 6-9-60 limited the authority of the Council so as to prevent the Council from considering the City's proposed changes on their merits.

In interpreting a statute, it is a primary obligation of both the Court and this office to determine legislative intent and give it effect if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). If the language is plain and unambiguous, it must be taken and understood in its plain, ordinary and proper sense, unless it fairly appears from the statute that the legislature intended to use such terms in a technical or peculiar sense. Etiwan Fertilizer Co. v. South Carolina Tax Comm'n, 60 S.E.2d 682, 217 S.C. 354 (1950).

It appears in the context of section 6-9-60, that the legislature did not intend to use the term "physical" in a technical or peculiar sense and, therefore, that term should be given its usual and ordinary meaning. The ordinary and proper sense of the word "physical" as reflected in the Random House College Dictionary (1975) is:

> (1) Of or pertaining to the body; (2) of or pertaining to that which is material; (3) of or pertaining to the properties of matter and energy other than those peculiar to living matter.

From an examination of the term "physical" as is used in section 6-9-60, it appears that that term would be broad enough in its plain and ordinary meaning to allow the Council to consider the City's proposed changes on their merits.

However, since there appear to be no long-standing administrative decisions of the Council in interpreting the term "physical" as used in section 6-9-60, the interpretation of the Council as to that term will be accorded the most respectful consideration by the courts and will not be overruled absent compelling reasons. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

Therefore, it appears that the term "physical" as is used in section 6-9-60, when given its plain or ordinary meaning, would allow the Council to consider the City of Columbia's proposed changes on their merits. It should be noted, however, that our Supreme Court has stated that "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons". Dunton v. S.C. Board of Examiners in Optometry, 353 S.E.2d supra at 133.

If I can answer any further questions, please do not hesitate to contact me.

Very truly yours,

C. Havird Jones, Jr.
Assistant Attorney General

CHJjr:mwr

REVIEWED AND APPROVED BY:

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