

*State Agencies (General Service)*  
The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11548  
COLUMBIA S.C. 29211  
TELEPHONE 803-758-2072

February 12, 1985

David A. MacLellan, Chairman  
State Fire Commission  
800 Dutch Square Boulevard  
Suite 201  
Columbia, South Carolina 29210

Dear Mr. MacLellan:

You have requested an opinion from this Office as to the affect, if any, of the recently enacted South Carolina Modular Buildings Construction Act (Act 481 of 1984) on certain aspects of the authority of the South Carolina State Fire Commission and the South Carolina State Fire Marshal. Because the regulations pursuant to the Modular Buildings Construction Act will have a bearing on some of the questions you have raised and because these regulations are proposed and have not yet been adopted pursuant to the Administrative Procedures Act, this Office deems it appropriate to issue legal advice rather than a formal opinion. To the extent this advice is predicated on the proposed regulations, any alteration in these proposed regulations may have an affect on the advice contained in this letter.

The focus of your questions relates to apparent conflicts between the South Carolina Modular Buildings Construction Act and statutes relating to the State Fire Commission and the State Fire Marshal (specifically, Sections 23-8-30 and 23-9-40). Before addressing your specific questions, I shall address the method for resolving any apparent conflicts between the Modular Buildings Construction Act and the cited statutes.

Act 481 of 1984 enacted the South Carolina Modular Buildings Construction Act. The Act added Chapter 41 to Title 23 of the 1976 Code of Laws. The policy supporting the Modular Buildings Construction Act is set out in Section 23-41-30 of the Act which provides:

It is the policy and purpose of this State to provide protection to the public

against possible hazards and to promote sound building construction and for that purpose to forbid the sales, rental, and use of new modular building units which are not so constructed as to provide safety and protection to their owners and users.

Because of the nature of the construction of modular building units, their assembly and use and that of their systems, including heating, cooling, plumbing, and electrical which may have concealed parts, there may exist hazards to the health, life, and safety of persons or property which are not easily ascertainable by purchasers, users, and local building officials.

Section 23-8-30 of the 1976 Code of Laws of South Carolina (1983 Cum. Supp.) provides that the State Fire Commission shall have the powers and duties:

(G) To promulgate, pursuant to provisions of Chapter 23 of Title 1, minimum 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. Provided, that the State Fire Commission shall not promulgate a building code as part of the regulations. Provided, further, that no provision of the regulations shall apply to the extent that it is in conflict with any statute of this State or any provision of any nationally recognized building or fire prevention code duly adopted by ordinance of a municipality. In the event of such a conflict, such statute or other provision shall apply in all respects. Provided, further, that the regulations promulgated by the State Fire Commission shall first be approved by the Budget and Control Board prior to being submitted to the General Assembly.

Section 23-9-40 of the 1976 Code of Laws of South Carolina provides as follows:

It shall be the duty of the State Fire Marshal to enforce all laws and ordinances of the State, and the several counties, cities, and political subdivisions thereof, with reference to the following:

- (a) The prevention of fires;
- (b) The storage, sale and use of combustibles and explosives;
- (c) The installation and maintenance of automatic or other fire alarm systems and fire extinguishing equipment;
- (d) The construction, maintenance and regulation of fire escapes;
- (e) The means and adequacy of exits, in case of fire, from 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;
- (f) Investigation of the cause, origin and circumstances of fire.

As is apparent from the above-cited provisions, Act 481 of 1984, the enabling legislation of the Modular Buildings Construction Act, is special in its nature and relates only to modular buildings. See, Section 23-41-30. Act 190 of 1979 created the State Fire Commission. Both this legislation and Section 23-9-40 are general in their scope. See, Section 23-8-30. Additionally, the Modular Buildings Construction Act is later in time (being enacted in 1984) than both the Act creating the State Fire Commission (being enacted in 1979) and the most recent amendment to Section 23-9-40 (occurring in 1963).

Clearly, it is the law that if there is a conflict between a general law and a special law on the same subject the special law will prevail. Culberth v. Prudence Life Insurance Company, 241 S.C. 46, 127 S.E. 2d 132 (1962); South Carolina Electric and Gas Company v. South Carolina Public Service Authority, 215 S.C. 193, 54 S.E. 2d 777 (1949); Spartanburg County v. Pace, et al., 204 S.C. 322, 29 S.E. 2d 333 (1944); Truesdell v. Johnson, 144 S.C. 188, 142 S.E. 343 (1928). Another pertinent rule is that the last legislative expression ordinarily governs. South Carolina Electric and Gas Company v. South Carolina Public Service Authority, 215 S.C. 193, 54 S.E. 2d 777 (1949).

Since the South Carolina Modular Buildings Construction Act is special in its nature and since it is later in time than the Act creating the State Fire Commission and the most recent amendments to Section 23-9-40, the Modular Buildings Construction Act prevails whenever there is a conflict.

I shall discuss hereinafter the four distinct questions which you have posited.

I.

- "1. Does the subject Act negate, diminish, or otherwise affect the authority of the South Carolina State Fire

David A. MacLellan, Chairman  
State Fire Commission  
Page 4  
February 12, 1985

Commission to promulgate regulations for fire and life safety as stated in 23-8-30?"

The South Carolina Modular Buildings Construction Act does not negate or diminish the authority of the South Carolina State Fire Commission to promulgate regulations for fire and life safety pursuant to Section 23-8-30 of the 1976 Code of Laws of South Carolina (1983 Cum. Supp.). Nevertheless, the Modular Buildings Construction Act and the proposed regulations do affect the application or enforcement of regulations promulgated by the State Fire Commission. This affect is discussed hereafter in connection with the third question which you have posed.

## II.

- "2. Does the subject Act negate, diminish, or otherwise affect the authority of the South Carolina State Fire Marshal to enforce certain laws as stated in 23-9-40?"

The South Carolina Modular Buildings Construction Act does not affect the State Fire Marshal's mandate to enforce the "laws and ordinances of the State, and the several counties, cities, and political subdivisions thereof" as described in Section 23-9-40 of the 1976 Code of Laws of South Carolina; however, as discussed hereinabove, any conflict between these statutes would be resolved in favor of the Modular Buildings Construction Act. 1/

## III.

- "3. Does the subject Act negate, diminish, or otherwise affect the authority of the South Carolina State Fire Marshal to enforce his Office's Rules and Regulations, as promulgated by the State Fire Commission?"

The Modular Buildings Construction Act provides at Section 23-41-50 that:

---

1/ This portion of the letter does not address conflicts, if any, in regulations. This portion of the letter deals only with conflicts, if any, in the express language of the applicable statutes.

The Division of General Services shall supervise enforcement of this chapter and regulations promulgated by authority of this chapter and shall employ and supervise personnel necessary to carry out the duties of its office.

Section 23-41-40 of the Act provides that the South Carolina Building Codes Council (as established by Section 6-9-60) "may promulgate regulations" which regulations "shall incorporate...nationally recognized codes as defined by Section 6-9-60."

Under the authority of newly enacted Section 23-41-50, the Division of General Services will be responsible to enforce the regulations promulgated pursuant to the Modular Buildings Construction Act. 2/

Therefore, the Modular Buildings Construction Act does negate the authority of the State Fire Marshal to enforce rules and regulations promulgated by the State Fire Commission to the extent those regulations conflict with any regulations promulgated by the authority of the Modular Buildings Construction Act (which regulations must relate to modular buildings as defined in the Act).

#### IV.

"4. Is the purpose of the subject Act to inspect and certify in-plant unit construction as meeting its adopted rules and regulations? If the purpose of the subject Act extends into code enforcement at site, please clarify in regard to relationships of other state and local entities who have statutory authority. Our concern is that as number of units assembled increases, the codes may require additional fire separation and fire systems?"

---

2/ This Office has given advice to the South Carolina Buildings Code Council that pursuant to the South Carolina Modular Buildings Construction Act and the proposed regulations thereunder, the Division of General Services, not the State Fire Marshal, has responsibility for the enforcement of the National Fire Protection Association Gas Code as it relates to liquified petroleum gas in reference to the manufacture or construction of modular building units. A copy of this advice letter is attached hereto.

Clearly, the Modular Buildings Construction Act is directed to the inspection and certification of modular building units "at the point of manufacture." The title of the Act itself, the Modular Buildings Construction Act, is indicative of the Act's application to the construction phase of modular building units. Section 23-41-30 provides:

It is the policy and purpose of this State to provide protection to the public against possible hazards and to promote sound building construction and for that purpose to forbid the sales, rental, and use of new modular building units which are not so constructed as to provide safety and protection to their owners and users. Because of the nature of the construction of modular building units, their assembly and use and that of their systems, including heating, cooling, plumbing, and electrical which may have concealed parts, there may exist hazards to the health, life, and safety of persons or property which are not easily ascertainable by purchasers, users, and local building officials. (Emphasis added)

The above underlined provisions of Section 23-41-30 demonstrate that the purpose of the Modular Buildings Construction Act is directed primarily to the construction phase of modular building units.

The Modular Buildings Construction Act is replete with references to supervision at the construction and/or manufacturing stage. Note Section 23-41-80 which provides:

Modular buildings must be certified...if they have been manufactured in accordance with approved building systems.... Certification labels can only be attached to a modular building by the manufacturer under the supervision of the approved inspection agency.

However, when the Act addresses itself to the installation <sup>3/</sup> of modular building units, it provides that "[l]ocal enforcement agencies shall issue building permits for certified modular building units, prior to installation, and issue certificates of occupancy for certified modular building units after they have

---

<sup>3/</sup> "Installation" is defined at Section 23-41-20(4) to mean "the assembly of modular building structures on-site and the process of affixing modular building's related components to land, a foundation, footings, utilities, or an existing building."

David A. MacLellan, Chairman  
State Fire Commission

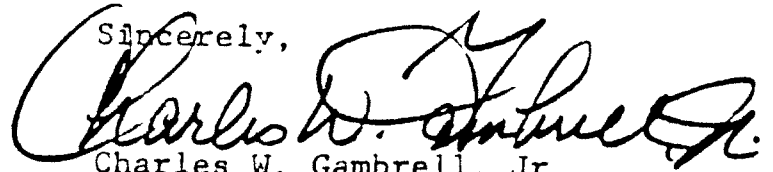
Page 7

February 12, 1985

been installed and inspected pursuant to this chapter." Section 23-41-100. Thus, the Act defers to other state and/or local entities with respect to on-site inspections or regulations.

Since it is my advice that enforcement of the South Carolina Modular Buildings Construction Act does not extend to modular building units once they are "affixed", I do not address the remaining aspects of your fourth question; however, I caution that specific fact situations will have to be addressed on a case-by-case basis.

Sincerely,



Charles W. Gambrell, Jr.  
Assistant Attorney General

CWGjr/bm

✓  
The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S C 29211  
TELEPHONE 803-758-2072

# 1385 AL  
Library

February 12, 1985

Cover letter

David A. MacLellan, Chairman  
State Fire Commission  
800 Dutch Square Boulevard  
Suite 201  
Columbia, South Carolina 29210

South Carolina Building Codes  
Council  
Budget and Control Board  
Division of General Services  
300 Gervais Street  
Columbia, South Carolina 29201

Gentlemen:

Enclosed herewith are two letters of advice which relate to the recently enacted South Carolina Modular Buildings Construction Act. As you can see from the letters, the Building Codes Council promulgates regulations pursuant to the Modular Buildings Construction Act which regulations are enforced by the Division of General Services. The Modular Buildings Construction Act does not extend to modular building units once they are "affixed;" therefore, regulations promulgated by the State Fire Commission, which are enforced by the State Fire Marshal, would be effective once a modular building unit is "affixed" (unless, of course, there is a local municipality that has jurisdiction). As you can readily see, the potential for conflict between regulations is great.

This dichotomy of authority necessitates cooperation between the Buildings Code Council and the State Fire Commission in the promulgation of regulations and between the Division of General Services and the State Fire Marshal in the enforcement of regulations.

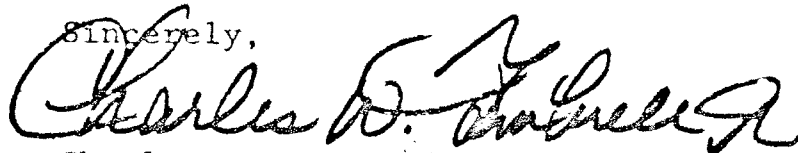
In order to promote fairness and consistency, we urge that the Building Codes Council, the Division of General Services, the



David A. MacLellan, Chairman  
State Fire Commission  
South Carolina Building Codes Council  
Page Two  
February 12, 1985

State Fire Commission, and the State Fire Marshal communicate with each other regarding regulations and enforcement to ensure the greatest degree of continuity possible.

Sincerely,



Charles W. Gambrell, Jr.  
Assistant Attorney General

CWGjr/bm  
Enclosures

cc: William T. Putnam, Executive Director,  
Budget and Control Board

Tony R. Ellis, Division Director,  
Division of General Services

Richard S. Campbell, State Fire Marshal

Joseph A. Wilson, II,  
Chief Deputy Attorney General

C. Havird Jones, Jr.,  
Assistant Attorney General

✓ 01/11/85 JZ 164

2/13/85  
Note: 1/ Part of

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-8667

February 13, 1985

Ms. Helen T. Zeigler  
Special Assistant for Legal Affairs  
Office of the Governor  
P. O. Box 11450  
Columbia, SC 29211

Dear Helen:

By your letter of February 4, 1985, you have requested advice from this Office as to a number of questions concerning transportation. I am responding to the first two (2) of your questions concerning school bus transportation. I understand that others have been assigned to work on the remaining questions.

Section 59-67-460 of the Code of Laws of South Carolina, 1976, as amended, contains provisions for contracting for transportation services with private individuals. See also Sections 59-67-10 and 59-67-40. Various statutory safety requirements for school buses are set forth in §59-67-70, et. seq. These requirements appear to apply to contracted bus service. See §59-67-10. For any desired additional information regarding safety requirements, I suggest that you contact the Office of Transportation at the South Carolina State Department of Education.

I hope that this information will be of assistance to you. If you have any questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

JESJr/rho

REVIEWED AND APPROVED BY:

ROBERT D. COOK  
Executive Assistant for Opinions