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



Office of the Attorney General

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

Dear Sirs:

You have requested an opinion from this Office as to the affect of certain proposed regulations promulgated pursuant to the South Carolina Modular Buildings Construction Act (Act 481 of 1984) concerning the responsibility for the enforcement of the standards regarding liquefied petroleum gas. Because the regulations pursuant to the Modular Buildings Construction Act 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. Of course, this advice is predicated on the proposed regulations and any alteration in the proposed regulations may have an affect on the advice contained in this letter.

The issue addressed herein is whether the Division of General Services or the State Fire Marshal has responsibility for the enforcement of standards regarding liquefied petroleum gas in the manufacture or construction of modular building units. For the reasons hereinafter set forth, it is the advice of this Office that, pursuant to the authority of the South Carolina Modular Buildings Construction Act and pursuant to the proposed regulations, the Division of General Services is responsible for the enforcement of standards regarding liquefied petroleum gas as they relate to the manufacture or construction of modular building units. 1/

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1/ This Office has issued a letter opinion regarding the authority of the Division of General Services, rather than the State Fire Marshal, to supervise enforcement of the laws and regulations of the State Board of Pyrotechnic Safety. The rationale of that conclusion is analogous to the instant matter. See, letter opinion of March 17, 1982 from Richard P. Wilson, Assistant Attorney General, to Richard S. Campbell, State Fire Marshal.

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.

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

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."

The proposed regulations prepared by the Building Codes Council provide at Regulation 19-460.4 that:

(7) Liquefied Petroleum Gas - The design, fabrication, and installation of gas piping systems and equipment for liquefied petroleum gas in or on ALL modular buildings shall comply with the requirements of the

National Fire Protection Association Gas Code  
(NFPA 54, Latest Edition).

Under the authority of newly enacted Section 23-41-50, the Division of General Services will be responsible to enforce Regulation 19-460.4 once it is properly adopted.

Chapter 43 of Title 39 of the 1976 Code deals with liquefied petroleum gases. Section 39-43-30 sets out the general duties of the Liquefied Petroleum Gas Board and provides that the Board shall:

(c) Make, promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied petroleum gases and specifying the odorization of such gases and the degree thereof. The regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the subject matter, and such regulations shall contain standards that are not less than those published by the National Fire Protection Association Pamphlet No. 58, 1969 Edition.

The Liquefied Petroleum Gas Board has promulgated Regulation 19-350 which provides:

19-350. National Fire Protection Association Pamphlet No. 58 - Current Edition Adopted.

The provisions of Pamphlet No. 58 shall constitute the minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied petroleum gases and the odorization of such gases and the degree thereof. A copy of Pamphlet No. 58 is filed in the office of the Secretary of State and made a part hereof by reference to the same extent as if it were hereinafter set forth in its entirety.

Further, Section 23-9-20 (1983 Cum. Supp.) provides in part that "[t]he State Fire Marshal shall supervise enforcement of the laws and regulations of the Liquefied Petroleum Gas Board and shall employ and supervise personnel necessary to carry out the duties of his office."

Therefore, the question presented is whether the Division of General Services (pursuant to Section 23-41-50 and proposed Reg. 19-460.4(7)) or the State Fire Marshal (pursuant to Section 23-9-20 and Reg. 19-350) is to supervise enforcement of standards regarding liquefied petroleum gas in the manufacture or construction of modular building units.

An analysis of the history and chronology of the law related to liquefied petroleum gas and certain other enactments will be helpful in understanding the rationale behind the advice set out herein.

In 1947 the Legislature enacted Act 64 which was this State's first enactment dealing with liquefied petroleum gas. (Hereinafter generally referred to as the Liquefied Petroleum Gas Act). Section 2 of Act 64 provided that the Insurance Commissioner <sup>2/</sup> would be responsible for promulgating and enforcing the regulations regarding liquefied petroleum gases. Specifically, Section 2 of Act 64 of 1947 provided:

SECTION 2: Regulations for equipment for storing, handling, transporting and utilizing and odorization-adoption-filing.  
The Insurance Commissioner shall make, promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof. Said regulations shall be such as are reasonably

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<sup>2/</sup> Act 870 of 1958 designated the Insurance Commission as State Fire Marshal. This provision was first codified at §37-80 of the 1962 Code of Laws of South Carolina. Thereafter, by Act 994 of 1966, Part II, §17, the office of State Fire Marshal was transferred to the Budget and Control Board with the State Fire Marshal to have all of the duties and responsibilities formerly exercised by the Chief Insurance Commissioner as State Fire Marshal, ex officio.

necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such regulations shall be adopted by the Insurance Commissioner only after a public hearing thereon. A copy of all rules and regulations made and promulgated by the Insurance Commissioner, as above provided, shall be filed with the Secretary of State.

It is hereby declared that regulations in substantial conformity with the published standards of the National Board of Fire Underwriters for the design, installation and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

In 1952 the Liquefied Petroleum Gas Act was amended by Act No. 785. This enactment did not affect the authority of the Insurance Commissioner to "make, promulgate and enforce regulations."

In 1959 Attorney General Daniel R. McLeod issued Official Opinion No. 557 dealing with the application of the Liquefied Petroleum Gas Act to public utilities. General McLeod concluded:

It is the opinion of this office that the Legislature has vested safety regulation of liquefied petroleum gas systems in the Commissioner of Insurance and that the Commissioner's jurisdiction, as set forth in the Liquefied Petroleum Gas Act, extends to the use, etc. of such gases by public utilities.

The Insurance Commissioner's authority in the opinion of this office is exclusive and is concerned only with safety factors.

In 1963, by Act 257, the General Assembly struck the entire Liquefied Petroleum Act then contained in Article 2, Chapter 6, Title 66 of the 1962 Code and inserted in lieu thereof a new Liquefied Petroleum Gas Act codified at Sections 66-431 through

66-431.17. Act 257 of 1963, at Section 66-431.1, created the Liquefied Petroleum Gas Board, the Chairman of which was to be the Chief Insurance Commissioner, ex officio. Section 66-431.2 of Act No. 275 provided that the Liquefied Petroleum Gas Board shall:

(a) See that all laws of this State governing liquefied petroleum gas are faithfully executed, and to that end they may make rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this chapter, the enforcement or administration of which is not otherwise specifically provided for, and may likewise from time to time withdraw, modify or amend any such regulation.

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(c) Make, promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied petroleum gases and specifying the odorization of such gases and the degree thereof. The regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the subject matter, and such regulations shall contain standards that are not less than those published in National Board of Fire Underwriters Pamphlet No. 58, 1961 Edition.

Thus, by Act 275 of 1963, the General Assembly superseded Opinion No. 557 by Attorney General McLeod and directed the Liquefied Petroleum Gas Board, not the Chief Insurance Commissioner, to be the appropriate entity to make, promulgate and enforce the regulations created by the Liquefied Petroleum Gas Board.

In 1971, by Act 480, the Liquefied Petroleum Gas Act was modified; however, this modification did not affect the authority of the Liquefied Petroleum Gas Board to enforce regulations.

In 1979, by Act 190, the General Assembly created the State Fire Commission. Section 5 of Act No. 190 of 1979 amended

Section 23-9-20 of the 1976 Code to add the following sentence: "The State Fire Marshal shall supervise enforcement of the laws and regulations of the Liquefied Petroleum Gas Board and shall employ and supervise personnel necessary to carry out the duties of his office." Thus, by this 1979 amendment, the responsibility to enforce the regulations of the Liquefied Petroleum Gas Board was given to the State Fire Marshal.

In 1984, Act No. 481 enacted the Modular Buildings Construction Act. As has been set out hereinabove, the Modular Buildings Construction Act provides, at Section 23-41-50, that the Division of General Services shall enforce the regulations promulgated by the South Carolina Building Codes Council. Proposed Regulation 19-460.4 adopts the National Fire Protection Association Gas Code (NFPS 54, Latest Edition). Therefore, under the 1984 Modular Buildings Construction Act, it is clear that the Division of General Services shall enforce the requirements of the National Fire Protection Association Gas Code relating to liquefied petroleum gas in or on all modular buildings.

Act No. 481 of 1984, the enabling act of the Modular Buildings Construction Act, is special in its nature and relates only to modular buildings. See, Section 23-41-30. The Liquefied Petroleum Gas Act is general in its scope. See, Section 39-43-30. Additionally, the Modular Buildings Construction Act is later in time than both the Liquefied Petroleum Gas Act and the 1979 amendment to Section 23-9-20 relating to the State Fire Marshal.

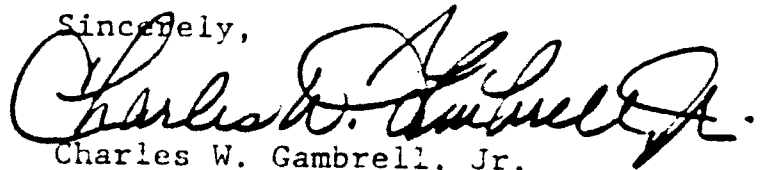
Clearly, it is the law that if there is a conflict between a general law and a special law on the same subject the special law will prevail. Culberth v. Prudence Life Insurance Company, 241 S.C. 46, 127 S.E. 2d 132 (1962); South Carolina Electric and Gas Company v. South Carolina Public Service Authority, 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 nature and since it is later in time than the 1979 amendment to Section 23-9-20 and the Liquefied Petroleum Gas Act which is general in nature, the Modular Buildings Construction Act prevails.

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For the above reasons, it is the advice of this Office that, assuming the proposed regulations remain in the form presented to this Office, 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 liquefied petroleum gas in reference to the manufacture or construction of modular building units.

Sincerely,



Charles W. Gambrell, Jr.  
Assistant Attorney General

CWGjr/bm