

## The State of South Carolina



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January 13, 1987

The Honorable Dick Elliott  
Member, House of Representatives  
Post Office Box 3165  
North Myrtle Beach, South Carolina 29582

Dear Representative Elliott:

You have asked who would have authority to issue an emergency order relative to beach or shore conditions at critical areas, so that it would be unnecessary to apply to the South Carolina Coastal Council for a permit ordinarily required by state law when a critical area is to be utilized.

Section 48-39-130, Code of Laws of South Carolina (1986 Cum. Supp.), provides in part:

(D) It shall not be necessary to apply for a permit for the following activities:

(1) The accomplishment of emergency orders of any duly appointed official of a county, municipality or of the State, acting to protect the public health and safety, upon notification to the Council.

\* \* \*

That section does not independently give jurisdiction to any public official to promulgate an emergency order. Instead, the authority or jurisdiction to promulgate such an order must be found within other statutes or legislative enactments granting authority to promulgate emergency orders relative to public health and safety.

The phrase "duly appointed official" does not refer to an individual who was appointed, rather than elected, to his position, such as a county administrator. A "duly appointed" official instead refers to one who has been appointed following all necessary legal and substantive requirements. Cheshire v. First Presbyterian Church, 220 N.C. 393, 17 S.E.2d 344 (1941); Cameron Equipment Corporation v. People, 55 Misc.2d 645, 286

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N.Y.S.2d 401 (1968). A concise definition of "duly" is found in Welborn v. Whitney, 190 Okl. 630, 126 P.2d 263, 266 (1942):

The word has acquired a fixed legal meaning, and when used before any word implying action, it means that the act was done properly, regularly, and according to law, or some rule of law. It does not relate to form merely, but includes form and substance, and implied the existence of every fact essential to perfect regularity of procedure.

To constitute a "duly appointed official," one must look to some statute other than Section 48-39-130 to derive jurisdiction or authority to issue emergency orders, to meet substantive requirements. The fact of election or appointment to an office or position is not the determining factor. Whether one is a "duly appointed official" must be decided on a case-by-case basis, considering especially the statutes applicable to a particular individual.

To determine whether a municipal or county official may have been "duly appointed" to issue emergency orders relative to public health or safety, we would advise that consultation be made with the appropriate city or county attorney, who would be in the best position to render that decision after reviewing state law and local ordinances which might be relevant.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/rhm

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
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