

1983 WL 181820 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 29, 1983

***1 SUBJECT: County Building Ordinance—Contractor's Licensure Retirement and the Owner-Builder Exemption**

(1) Under the Colleton County Building Ordinance, a general contractor's license is not required for the construction, alteration, repair or other work done by an owner, members of his family, or his employees on property of that owner.

(2) This exemption from the licensing requirements of [Code Section 40-11-100](#) does not apply so as to include contractors, subcontractors, or builders employed by the owner or superintendents or foremen not employed by the owner on a regular salary basis.

(3) This exemption from the licensing requirements of [Code Section 40-11-100](#) does not apply to any builder, developer, or contractor engaged in the construction of buildings for resale.

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QUESTION:

Under the County Building Ordinance as adopted by Colleton County, may an owner construct his own building for his own commercial use?

OPINION:

Yes. The County Ordinance, as written, refers to an exemption from contractor licensure requirements for the construction, alteration, repair or other work upon any (emphasis added) property by the owner thereof or by employees of the owner or members of the family of the owner. Relief from contractor's licensure requirements is specifically excluded only as to the owner-builder, developer, or contractor who is engaged in construction of buildings for resale. Therefore, under the ordinance, as written, an owner may himself or his own forces or family construct any building upon his own property without obtaining a contractor's license, so long as the construction is not for purposes of resale.

However, be advised that [Regulation 29-40](#) of the Rules and Regulations of the South Carolina Licensing Board states:

An owner of property, building or improving structures thereon, or appurtenances thereto, is deemed not to be doing so for a fixed price, commission, fee or wage within the meaning of [Section 40-11-10 Code of Laws of South Carolina](#) 1976, provided: That such structure or structures with or without the appurtenances thereto is not intended or offered for sale, lease or rent within six-months after the completion thereof, and contains no more than three dwelling units of which one dwelling unit shall be the actual domicile of such owner-builder if designed wholly or partially for residential occupancy.

In all actions brought pursuant to [§§ 40-11-10 et seq., Code of Laws of South Carolina](#), 1976, as amended, proof of the sale or offering for sale, lease or rent of such structures by the owner-builder within one year after completion of same is presumptive evidence that such structure was undertaken for a fixed price, commission, fee or wage.

The Contractor's Licensing Board interprets this Regulation to mean that an owner may not construct a building to be used for any commercial purpose without obtaining a licensed general contractor, since the Board holds that commercial usage is equivalent to receipt of a wage, fee, or commission in that the commercial building will be used to make a profit for the owner.

*2 The definition under [Section 40-11-10](#) for a general contractor is as follows:

(1) A 'general contractor' shall be one who for a fixed price, commission, fee or wage undertakes or offers to undertake the construction or superintending of construction of any building, highway, sewer, grading, improvement, reimprovement, structure, or part thereof, when the cost of the undertaking is thirty thousand dollars or more. Anyone who engages or offers to engage in such undertaking in this State shall be deemed to have engaged in the business of general contracting in this State.

[Section 40-11-100](#) makes it unlawful to engage in contracting without obtaining a general contracting license from the Board.

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