

1981 WL 158049 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 20, 1981

***1 SUBJECT: Outdoor Advertising**

(1) Nursing homes do not constitute commercial activities for purposes of the Highway Advertising Control Act.

Ralph Bowers
SCDHPT Outdoor Advertising Administrator

QUESTION:

Can a nursing home operated for profit qualify an area as an unzoned commercial area for purposes of the Highway Advertising Control Act?

DISCUSSION

The Highway Advertising Control Act ([S.C. Code §§ 57-25-110 to- 220 \(1976\)](#)) expressly forbids the erection and maintenance of an 'outdoor advertising sign . . . which is visible from the main-traveled way of the interstate or Federal-aid primary highways in this State . . .' with certain enumerated exceptions. [S.C. Code § 57-25-140 \(1976\)](#). Among those exceptions are 'Signs . . . located in unzoned commercial areas located within six hundred and sixty feet of the nearest edge of the right-of-way.' For purposes of this discussion, I am assuming that the nursing home and its parking lot are within six hundred sixty feet of an interstate or Federal-aid primary highway.

[S.C. Code § 57-25-120\(d\) \(1976\)](#) defines unzoned commercial or industrial area as 'the land occupied by the regularly used building, parking lot, and storage or processing area of a commercial, business, or industrial activity . . . The unzoned land shall not include:

. . .

2. Land predominantly used for residential purposes.

. . .'

[S.C. Code § 57-25-120\(e\)](#) defines commercial or industrial activities as 'those established activities generally recognized as commercial or industrial by zoning authorities within the State, except that none of following shall be considered commercial or industrial activities:

. . .

(3) Activities conducted in a building principally used as a residence.

. . .'

S.C. Code Regulation R63-342U provides essentially the same definition.

The first question which must be answered is, therefore, whether or not the nursing home is an established activity generally recognized as commercial by zoning authorities within this State. A survey of the eight largest metropolitan areas in this State indicates that nursing homes may generally be located within light commercial zones. Thus, it appears that zoning authorities generally view nursing homes as activities which are commercial in nature. This survey is supported by a few cases which have been decided in other jurisdictions holding that nursing homes are commercial activities for purposes of restrictive covenants. E.g., [Lanski vs. Montealegre](#), 361 Mich. 44, 104 N.W.2d 772 (1960). Additionally, nursing homes often provide organized nursing service in return for payment for such service and, therefore, could be classified as a commercial activity in the broadest sense of any type of business or activity which is carried on for profit.

Even if 'commercial activity' is interpreted in its broad sense, however, the discussion cannot end there, for, if it did, apartment houses, which are clearly businesses or activities carried on for profit, would be considered commercial activities. Under the Highway Advertising Control Act, though, apartment houses would not qualify as commercial activities because the activity is conducted in buildings principally used as residences.

*2 Likewise, it appears that nursing homes are buildings primarily used as residences. The persons who stay in nursing homes are generally there for long terms, frequently living there all of the last years of their lives. In many cases, they turn over their property to the nursing home in exchange for the right to remain there for their last years. They receive their mail at the nursing home. They register to vote, if capable, using the nursing home as their residence address. Additionally, five of the eight cities surveyed recognize the residential nature of nursing homes by allowing them to be located within single and multi-family residential zones either by right or upon special approval of the zoning boards, with no variance being required. Columbia Code Ord. § 6-3064 D.6; Charleston Zoning Ord. Act 2 §§ 54-15(6) - 16, -17; Florence Zoning Ord. § 105.2.4; Greenville Zoning Ord. § 6-3.4; Rock Hill City Code § 38-4. §

Although nursing homes do provide organized nursing services, these services do not detract from the residential quality of the homes. Such services provided to persons within private one-family residences (as frequently occurs among the more affluent) certainly would not alter the character of those residences as residences. The nursing homes simply provide those services on a more concentrated and efficient basis to a larger number of persons. The fact remains that the persons who reside in nursing homes do so, for the most part, on a permanent, not temporary or transitory, basis. As buildings primarily used as a residence, the site cannot qualify as a commercial activity under the definitions established in the Highway Advertising Control Act.

OPINION

It is, therefore, the opinion of this office that nursing homes do not qualify as commercial activities for purposes of the Highway Advertising Control Act.

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