

1980 WL 120602 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 14, 1980

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Attorney at Law  
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Dear Mr. Early:

With apologies for the delay, I am writing in response to your request that I reconsider a September 24, 1979, opinion directed to Mr. J. J. Jowers, the Bamberg County Tax Assessor, in which I enclosed a copy of an earlier opinion to the effect that a county ordinance requiring building permits can operate within a municipality which also requires building permits only with the consent or agreement of the municipal governing body. I have discussed the matter with Deputy Attorney General Joe Allen, who, as you know, handles the tax questions in our Office, and with George R. Hundley, Esquire, who is the attorney for the South Carolina Municipal Association. I have reviewed my opinion in light of the provisions of [Section 12-43-240, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, and of the South Carolina Tax Commission's Rule 117-113 [CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, Vol. 26] and I have reached the same conclusion as that, reached in the two earlier opinions mentioned above.

The various statutes cited in those earlier opinions clearly militate against a county imposing county building permit requirements upon a municipality which requires its own building permits without the latter's agreement. See, e.g., [§§ 4-25-20, 4-25-210, 4-27-90, 6-7-330 and 6-9-50, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Moreover, [Section 4-9-40 of the 1976 Code](#) specifically prohibits a county from performing functions or providing services within the corporate limits of a municipality which already performs those functions or provides those services without the permission of the municipal governing body. While [Section 12-43-240 of the 1976 Code](#) requires that all counties issue building permits to persons engaging in new construction or renovation, it neither expressly nor impliedly authorizes their issuance on a county-wide basis to the exclusion of municipalities situate therein. In fact, the statute specifically recognizes the authority of municipalities to issue building permits as follows:

Every municipality in the county requiring building permits shall furnish copies of said permit to the county assessor within ten days after its issuance.

Similarly, Rule 117-113, promulgated primarily for tax assessment purposes, does not require that building permits be issued only by the county itself but, instead, requires that copies of those permits, issued by whatever 'proper authorities,' be furnished the assessor within ten days after issuance.<sup>1</sup> Of course, municipalities which issue building permits must comply with the requirements of Rule 117-113. The authorities pursuant to which Rule 117-113 was promulgated are [Section 12-3-140\(6\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, and Act No. 208 of 1975. 59 STAT. 248 (1975). [Section 12-3-140\(6\)](#) directs the State Tax Commission to require, *inter alia*, town and city public officers to report information as to the assessment of property and receipts from licenses and does not purport to grant to counties the sole authority to issue building permits. Section 4 of Act No. 208 of 1975 imposes a duty upon the assessor to maintain records of building permits necessary for a continuing reassessment program and Section 6 thereof (now codified as [Section 12-43-240](#)) specifically provides for the reporting of information regarding municipal building permits. To argue that only counties may issue the permits necessary to obtain the information required to maintain the assessment programs provided for by Act No. 208 is to go far beyond the intent of that Act.

\*2 Because this interpretation is not free from doubt, however, I would note that the only way to obtain a definitive answer to the question is by judicial resolution pursuant to [Sections 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, the Uniform Declaratory Judgments Act. I would also note again that this opinion relates only to municipalities which themselves require building permits and a county ordinance requiring building permits would be applicable in municipalities which do not require them.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

Footnotes

- 1 Furthermore, inasmuch as it is a regulation only, to the extent that it conflicts with statutory provisions, if indeed it does, it cannot supersede them. 1A SUTHERLAND STATUTORY CONSTRUCTION § 31.1. (4th Ed. 1972).

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