

1980 WL 120598 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 14, 1980

*1 Philip E. Wright, Esquire
Lancaster County Attorney
Post Office Box 150
Lancaster, South Carolina 29720

Dear Mr. Wright:

You have requested an opinion from this Office as to whether or not Act No. 156 of 1979, the South Carolina Building Energy Efficiency Standard Act, requires Lancaster County to establish and maintain a local enforcement agency. In my opinion, it does not.

Section 6(b) of the Act provides in part:

In areas of the State where local governments have not adopted building codes, they may designate their engineer or director of public works, or their chief fire inspector as the enforcement agency. In the absence of the above, they shall advise the permittee of the provisions of the Energy Efficiency Standard Act, and the penalties for violation.

Inasmuch as the word 'may' as used in the first sentence of the paragraph is generally interpreted as permissive rather than mandatory [see, 2A SUTHERLAND STATUTORY CONSTRUCTION § 57.11], the Act does not require those local governments to which Section 6(b) is applicable to create enforcement agencies but, instead, allows them to do so should they wish. Should they not choose to establish local enforcement agencies, then the duty of such local governments is set forth in the second sentence of the above-quoted paragraph, which uses the compulsory 'shall' and requires only that they advise permittees of the provisions of the Act and the penalties for any violation thereof.

Nonetheless, it would appear from the language of the Act that local governments must appoint an appeals board under Section 6(d) provided a sufficient number of qualified appointees can be found.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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