

1979 S.C. Op. Atty. Gen. 26 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-14, 1979 WL 29020

Office of the Attorney General

State of South Carolina

Opinion No. 79-14

January 26, 1979

***1 SUBJECT: Property Tax—Mobile Homes—Non-Resident Military Personnel—Licensing Requirements.**

(a) The license provisions of Act 576, Acts of 1978 is applicable to a mobile home of a non-resident serviceman whether the mobile home is in fact real or personal property.

(b) A moving permit should be obtained in accordance with the 1978 Act when the mobile home of the non-resident serviceman is to be relocated.

TO: Honorable Carl Womble
Hampton County Tax Assessor

QUESTION:

Act 576, Acts of 1978, codified as § 31–17–320, et seq., requires a license and moving permit for mobile homes. Is the license and moving permit required when the mobile home is the property of a non-resident serviceman?

APPLICABLE LAW:

Act 576, Acts of 1978, Section 31–17–20 of the 1976 South Carolina Code of Laws and 50 U.S.C.A. 574.

DISCUSSION:

Act 576, Acts of 1978 amended Article 3 of Chapter 17 of Title 31 of the 1976 Code of Laws. The amendments deleted all requirements that taxes be paid on a mobile home as a condition precedent for the issuance of the license. The license is, by § 31–17–330, in lieu of any building or construction permit required by local act or county ordinance. The license is now the exclusive method of certifying compliance with the State's building and safety requirements to an electrical supplier.

Section 31–17–70 requires such certification prior to electricity being furnished the mobile home. The State's policy regarding the safety of mobile homes is set forth in Section 31–17–30(a) as follows:

‘(A) Mobile homes, and their integral parts, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing, and electrical systems) like other finished products having concealed vital parts may present hazards to the life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes which are not so constructed as to provide reasonable safety and protection to their owners and users.’

In an Opinion issued February 6, 1973 regarding the statutes prior to the 1978 Amendment we stated:

'It cannot be said that the policy of the State is to treat the safety of nonresident servicemen and their families that reside in mobile homes any different than that of any other person that resides in mobile homes. Thus applying the rationale in the case, California v. Buzard, it is the opinion of this office that the license required by Section 46-100 is now, because of the 1972 Act, applicable to mobile homes of nonresident servicemen. The license is required only, however, for the safety regulations of the mobile home and cannot be used to require the serviceman to pay a tax on the mobile home when the same is exempt therefrom by Federal law.'

*2 Our conclusion there stated is applicable to the question here presented. The license can be required in aid of enforcement of the State's safety policy, however, does not subject the mobile home of a non-resident to taxation. You further inquire whether the license is required if the mobile home is annexed to realty and is in fact real and not personal property. A mobile home is defined by the 1978 Act to be:

'(a) 'Mobile home' means a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as onsite constructed housing.' Section 31-17-20, 1976 South Carolina Code of Laws.

The license is thus required. It should also be noted, that if the mobile home is in fact real property, it is taxable. The Soldiers' and Sailors' Relief Act, 50 U.S.C.A. 574, is applicable to personal and not real property. It should, however, be further noted that the mobile home is not taxable if the same is in fact personal property. Our statutory definition that the same are real property for tax purposes does not negate the exemption provided by the Federal statutes. United States v. Chester County Board of Assess. and Rev. of Taxes, 285 F.Supp. 1001.

You further ask whether the moving permit required by the 1978 Act must be obtained by the non-resident military person. While there is some doubt we conclude that the moving permit is sufficiently related to the enforcement of the safety and fire requirements so that the same will be necessary.

CONCLUSIONS:

(a) The license provisions of Act 576, Acts of 1978 is applicable to a mobile home of a non-resident serviceman whether the mobile home is in fact real or personal property.

(b) A moving permit should be obtained in accordance with the 1978 Act when the mobile home of the non-resident serviceman is to be relocated.

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