

1980 WL 121156 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1980

\*1 Mr. John T. Watkins

Director

S. C. Residential Home Builders Commission

Suite 312, 2221 Devine Street

Columbia, South Carolina 29205

Dear John:

In a letter to this Office you asked whether it is a violation of the statutes governing residential home construction for a builder, not licensed by the South Carolina Residential Home Builders Commission, to submit a bid to engage in residential construction. Admittedly, pursuant to [Section 40-59-140, Code of Laws of South Carolina](#), 1976, if such an individual is properly licensed as a general contractor by the South Carolina Licensing Board for Contractors, he would not have to be licensed by the Commission to bid to engage in residential home building.

Pursuant to [Section 40-59-10, Code of Laws of South Carolina](#), 1976, a residential home builder is defined as:

‘. . . one who constructs a residential building or structure for sale or who, for a fixed price, commission, fee or wage, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not over three floors in height and which does not have more than sixteen units in the apartment complex, or the repair, improvement or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars. Nothing herein shall prevent any person, or his agents, from performing these acts on his own residence or on his other real estate holdings. Anyone who engages or offers to engage in such undertaking in this State shall be deemed to have engaged in the business of residential home building.’ (Emphasis added.)

By [Section 40-59-130, Code of Laws of South Carolina](#), 1976, and Rule 106-9 of the Rules and Regulations of the South Carolina Residential Home Builders Commission criminal penalties are provided for a residential home builder ‘. . . who undertakes or attempts to undertake the business of residential home building . . .’ without being properly licensed. (Emphasis added.) Of course, the Commission may also seek to enjoin a builder who violates the provisions regulating residential home builders.

The term ‘offer’ is subject to varying interpretations and admittedly some consideration should be given to the firmness of the ‘offer to engage.’ Thus while the term ‘offer’ has been defined as:

‘. . . to bring to or before; to present for acceptance or rejection; to hold out or proffer; to make a proposal to; to exhibit something that may be taken or received or not . . .’, ‘Offer’, [Words and Phrases](#), Vol. 29, p. 395 (1972).

interpretations have been given the term which indicate the necessity of a commitment of a nature which is more than a ‘mere willingness’ or ‘intention’ to engage in something. See, e.g., [Ibid.](#), pp. 395-410.

However, it does not appear that an unduly restrictive interpretation should be given the term ‘offers to engage’ as used in the above definition of a residential home builder. This is supported by the statutory language referenced above which makes it a criminal offense to ‘attempt to undertake’ residential home building without being properly licensed. Furthermore, inasmuch as you specifically questioned the necessity of a builder to be licensed who actually submits a bid to engage in residential home building, it appears that sufficient indication of intent to engage in residential home building is manifested by such a

builder. Therefore, in the opinion of this Office, it is a violation of the statutes and rules and regulations pertaining to residential home builders for an individual, not otherwise properly licensed as a general contractor, to submit a bid to do residential home construction without being properly licensed by the South Carolina Residential Home Builders Commission.

\*2 With best wishes.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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