

1979 WL 42717 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1979

***1 RE: Act No. 174 of 1977**

Mr. George L. Schroeder
Executive Director
Legislative Audit Council
500 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

In your letter to this Office, you referenced certain actions by the South Carolina Licensing Board for Contractors taken in response to Act 174 of 1977 which amended the statutes relating to contractors to include provisions as to lightning protection. The Act is now codified as [Sections 40-11-10](#) and [40-11-100 of the Code of Laws of South Carolina](#), 1976, as supplemented. [Section 40-11-10](#) states:

(2) A 'mechanical contractor' shall be one who for a fixed price, commission, fee or wage undertakes or offers to undertake any plumbing, heating, air conditioning, lightning protection work or electrical work when the cost of the undertaking is ten thousand dollars or more. Anyone who engages or offers to engage in such undertaking in this State shall be deemed to have engaged in the business of mechanical contracting in this State.

[Section 40-11-100](#) states that:

It shall be unlawful for any person coming within the definition contained in [Section 40-11-10](#) to engage or offer to engage in general or mechanical contracting in this State without having first obtained a license as required by this chapter or for any manufacturer, dealer or installer to sell, offer for sale, or install any brand of lightning protection equipment until it has been approved by the Underwriters' Laboratories, Inc., and the Lightning Protection Institute. Each installation of a lightning protection system for which a license is required under [Section 40-11-10](#) shall bear the 'Master Label' of the Underwriters' Laboratories, Inc.

In response to the passage of Act No. 174 of 1977 dealing with lightning protection, the South Carolina Licensing Board for Contractors was concerned as to what effects a mandatory examination requirement for all individuals desiring to be licensed to do lightning protection work would have on the construction industry and especially as to any construction then under way or already under contract to be done. In response to such, the Board decided that any properly licensed electrical contractor could perform lightning protection work under his current license for the remainder of 1977 and that the Board would offer these licensed electrical contractors at the time of the 1978 license renewal period the opportunity to add the lightning protection classification to their licenses without requiring passage of an additional examination in the area of lightning protection. However, the Board also took the position that any contractor desiring licensing to do lightning protection work after January 31, 1978, would be required to successfully complete the lightning protection examination prepared by the Board.

Such position was in accordance with the Board's opinion that past examinations which had been required of those individuals desiring to be licensed as electrical contractors were structured so that they also exhibited the technical competence of those individuals to do lightning protection work. Therefore, the Board was of the opinion that further examination of licensed electrical contractors as to their ability to do lightning protection work was unnecessary inasmuch as they had previously

exhibited their competence. However, it has always been the Board's position that any individual desiring the lightning protection classification who was not already properly licensed as an electrical contractor must successfully complete the lightning protection examination.

*2 As to the question in your letter concerning the Board issuing free of charge over two hundred lightning protection licenses to licensed electrical contractors, the electrical contractors who desired to be licensed to do lightning protection work in accordance with the above policy were only able to renew their mechanical contractors' licenses which noted the lightning protection classification and the electrical classification upon payment of the required license renewal fee. It is the Board's policy that in order to be licensed as a mechanical or general contractor, or to have such licenses renewed, the required fee must be paid. Such a payment, along with meeting any other requirements, entitles an individual to be licensed as a general or mechanical contractor with those specializations noted as to areas in which he is qualified to work. For instance, an individual may be licensed upon payment of the required fee as a mechanical contractor. On his license it may be noted that he is permitted to do, for instance, electrical, heating, and air conditioning work. There are no separate licenses issued for such categories. Therefore, your statement that these individuals were licensed to do lightning protection work free of charge must be viewed in association with the policy of the Board as above referenced.

As referenced above, Act 174 of 1977 involved a re-definition of a mechanical contractor to include an individual who undertakes or offers to undertake lightning protection work when the cost is ten thousand dollars or more, and the addition of the provision now incorporated in [Section 40-11-100](#) mandating that lightning protection equipment must be approved by the Underwriters' Laboratories, Inc. and the Lightning Protection Institute. This latter portion concerning the equipment is irrelevant to the questions raised in your letter. There were no requirements in the Act which specifically referenced that separate examinations be given in the area of lightning protection work. Therefore, such Act must be construed in association with other sections of the Code relating to contractors previously adopted.

[Section 40-11-100](#) previously stated that:

(i)t shall be unlawful for any person coming within the definition contained in [Section 40-11-10](#) to engage or offer to engage in general or mechanical contracting in this State without having first obtained a license as required by this Chapter.

Section 40-11-130 states

anyone hereafter desiring to be licensed as a general or mechanical contractor in this State shall make and file with the Board, thirty days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed, for examination by the Board. Such application shall be accompanied by the payment of a contractor's license fee of sixty dollars. If the application is satisfactory to the Board the applicant shall be entitled to an examination to determine his qualifications.

*3 Section 40-11-140 states in part that:

(i)f the result of the examination of any applicant shall be satisfactory to the Board, the Board shall issue to the applicant a license to engage in business as a general or mechanical contractor in the State.

As you can see, these sections do not reference a particular examination in a specialized area being given to any particular types of contractors, mechanical or general. Furthermore, a review of Act No. 174 of 1977 does not reveal that it was expressly stated that a separate examination be given to those desiring to be licensed to do lightning protection work. These code sections referenced simply speak of being licensed as a general or mechanical contractor with no further indication of specialization.

As to your request to obtain a clear definition of the intent of Act No. 174 of 1977 as to lightning protection work, the only response we can make is that it appears that the Act was an attempt to require those individuals desiring to be qualified to do lightning protection work, the cost of which is ten thousand dollars or more, be licensed by the South Carolina State

Licensing Board for Contractors. Arguably, such was accomplished by the actions of the Licensing Board in its policy previously referenced.

As to your request for an opinion concerning the issuance of the lightning protection license to licensed electrical contractors without a charge imposed, as discussed previously, such was not in fact the case. Such electrical contractors were licensed to do lightning protection work only upon payment of the fee imposed to obtain a mechanical contractor's license. As earlier indicated, the payment of such a fee is required for those individuals requesting to be licensed as mechanical contractors regardless of the number of specializations reflected in the license. Such a policy appears to be totally in keeping with the statutes previously noted which reference mechanical and general contractors without noting further any areas of specialization. There was no provision in Act 174 of 1977 that a separate fee be required of any individual wanting to be licensed to do lightning protection work or, in fact, any other area of specialization included in the broad category of mechanical and general contracting.

Hopefully the above discussion is in full response to the questions put forth in your letter.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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