

1977 S.C. Op. Atty. Gen. 293 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-367, 1977 WL 24705

Office of the Attorney General

State of South Carolina

Opinion No. 77-367

November 15, 1977

\*1 TO: E. S. Coffey  
State Highway Engineer

### QUESTION

May a municipality require a permit for moving a building within its jurisdiction?

### AUTHORITIES

Code of Laws of South Carolina Section 5-25-330 (1976)

Code of Laws of South Carolina Section 5-25-400 (1976)

Code of Laws of South Carolina Section 56-5-4170 (1976)

Act No. 48, 1977 Acts and Joint Resolution 59

### DISCUSSION

You have requested an opinion of this office as to whether it is permissible for the City of Spartanburg to require a local permit to move buildings within that city's jurisdiction.

Under certain circumstances municipalities are statutorily endowed with the authority to require permits to move buildings. It is provided in Title V, Municipal Corporations, Code of Laws of South Carolina § 5-25-330 (1976) that:

No building shall be moved until a permit has been obtained from the [building] inspector, and such official shall not issue such a permit if in his judgment the proposed new location of the building would seriously increase the fire hazard of the surrounding buildings.

Further § 5-25-400 states that:

No building shall be altered, repaired or moved until it has been examined and approved by the inspector as being in good and safe condition to be altered as proposed, and the alteration repair or change so made shall conform to the provisions of this chapter.

From these statutes, it is obvious that a municipality has not only the authority, but also the duty to consider applications and to issue permits where conditions warrant. However, the issues for such municipality's determination are in the realm of potential fire hazards and the extent of the deterioration of the building to be moved. Spartanburg's Building Code Ordinance, § 2204, Moving of Buildings, goes beyond the above statutory authority and into an area within the authority of the Highway Department when, at § 2204.3(a), the Building Official is required to reject an application where 'the moving of any building

will cause serious injury to persons or property or serious injury to the streets or other public improvements . . .'. Prior to April, 1977, local authorities would have had authority to require permits under such conditions, for Code of Laws of South Carolina § 56-5-4170 (1976) stated that:

The Department with respect to the highways under its jurisdiction and local authorities with respect to highways under their jurisdiction may, in their discretion upon application in writing and good cause being shown therefore to the effect that it is in the public interest, issue special permits in writing authorizing the applicants to operate or move vehicles or combinations of vehicles of a size and weight of vehicle or load exceeding the maximum specified in this article . . . (emphasis added.)

However, Act No. 48, 1977 Acts and Joint Resolutions 59, amends § 56-5-4170, and deletes 'local authorities' from those authorized to issue permits. This leaves the Highway Department with sole authority to issue permits for highways and streets within its jurisdiction, to include those highways and streets in the State highway system but within a municipality's boundaries.

\*2 Section 56-5-4170, as amended, is silent as to the authority of municipalities on streets solely within their jurisdiction. In such cases, it would be permissible for municipalities to require permits, as this area has been left open, and such an ordinance would fall within their police powers.

### CONCLUSION

A municipality has the power and duty to require permits for moving buildings, but these permits have limited application. Section 5-25-330 requires the building inspector to examine the destination site for potential fire hazards before the issuance of a permit. Section 5-25-400 states, where applicable, that no building shall be moved before it is found to be in 'good and safe condition' by the municipal building inspector. Finally, a municipality may require permits on streets within its boundaries but not within the State Highway System, and may set reasonable standards for issuance of any such permits. For all conditions except the above, the Highway Department is the sole agency responsible for the issuance of permits for moving buildings on highways within the State highway system.

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