

1979 WL 43066 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1979

\*1 Mr. Thomas H. Curlee, Jr.  
Attorney-at-Law  
1224 Pickens Street  
P. O. Box 11548  
Columbia, S. C. 29211

Dear Mr. Curlee:

Mr. Ross with the South Carolina Licensing Board for Contractors has asked that I reply to your letter to him of May 8, 1979. In this letter you asked for the Board's consideration of whether the proposed arrangement whereby Mr. Richard Pack, Vice President for Zippy Mart of South Carolina, Inc. would monitor and supervise the construction work performed by various subcontractors for store structures being built in South Carolina for Zippy Mart would qualify as an exemption from the license requirement imposed for general contractors generally by [Section 40-11-100 of the 1976 Code](#) of Laws. As you are aware, pursuant to [Section 40-11-10 of the 1976 Code](#) of Laws, a general contractor is defined as:

‘ . . . one who for a fixed price, commission, fee or wage undertakes or offers to undertake the construction or superintending of construction of any building, highway, sewer, grading, improvement, reimprovement, structure, or part thereof, when the cost of the undertaking is thirty 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 general contracting in this State.’

As to your situation, you indicated that Mr. Pack supervises and monitors the construction work performed by various subcontractors on the store structures being built but does not perform such a function for any fixed price, commission, fee or wage. Instead, you indicated that he performs this superintending strictly as one of his executive functions as an employee of Zippy Mart, Inc. You further indicated that these buildings are being built solely for the use of and to be owned by Zippy Mart of South Carolina, Inc. in connection with their providing retail services for the general public. You further stated that the average size construction job would be an undertaking of \$30,000 or more including the sewer, grading various other improvements, and the structure itself.

Please be advised that I am unaware of any case law in this State which specifically comments on an arrangement such as above defined. However, an earlier opinion of this office which was directed to the Licensing Board for Contractors by Mr. Julian L. Johnson on July 13, 1965 was concerned with a similar situation. More specifically, the question was ‘whether or not a supervisor or superintendent of construction, when in the direct employ of the owner, should be required to apply for and receive a contractor's license.’

That opinion referenced the decision of the Arkansas Supreme Court in the case of [Arkansas State Licensing Board for General Contractors v. Lane, 215 S.W. 2d 707 \(1948\)](#). The Arkansas court in its decision set forth several criteria to be considered in determining whether an individual hired to superintend construction of a particular building was to be considered to be a general contractor or an ‘overseer’. It was stated by the court in that case and in the above referenced opinion of this office that the following should be considered in determining whether an individual is in the category of a supervisor or is in fact a general contractor thereby necessitating his being licensed when involved in jobs which meet the designated financial amount:

\*2 ‘ . . . that the employee be paid a regular salary or wage, regardless of the cost of the construction, and that he receive no commission, fee or wage other than the regular, stipulated salary, either in the form of bonus or otherwise; that employee, in his supervisory capacity, work directly under the instructions and control of the owner, looking toward the end result and the directing the mechanical contractors as to how to proceed to fulfill the contract; that the supervisor shall devote full time to the job, have no interest whatever in such construction other than as an employee to see that the work is properly done in compliance with the agreement; he shall have no authority to hire or discharge any employee; that he shall have no power or interest in the payment of any employees or workmen; that he shall furnish no material on the job at any time and under any conditions and at all times work under the instructions of and be subservient to the owner or owners, this is to be under all conditions and circumstances while he is employed on the construction job; and that any contract or agreement of employment shall be subject to the right of the owner to discharge the employee at any time.’

Such criteria is similarly referenced in the cases of [Arkansas State Licensing Board for General Contractors v. Rosamond](#), 237 S.W. 2d 22 (1951), [Davidson v. Smith](#), 530 S.W. 2d 356 (1975), and [Hickory Furniture Mart, Inc. v. Burns](#), 230 S.E. 2d 609 (1976).

Therefore in reference to your request, if the duties and responsibilities of Mr. Pack fall within the criteria set forth above, it appears that he may be considered to be a supervisor rather than a general contractor. Therefore, inasmuch as he would be a supervisor he would not be required to be licensed by the South Carolina Licensing Board for Contractors. Upon review of the above, please respond more fully to the Board as to whether in fact the duties and responsibilities of Mr. Pack are in keeping with the above referenced criteria. If there are any further questions do not hesitate to contact me. Sincerely,

Charles H. Richardson  
Assistant Attorney General

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