

1979 WL 43543 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 23, 1979

*1 Mr. John T. Watkins
S. C. Residential Home Builders Commission
Suite 312
2221 Devine Street
Columbia, South Carolina 29205

Dear John:

In a letter to this Office you raised the question of whether the S. C. Residential Home Builders Commission could issue a limited license. You indicated that there are some individuals who do improvement work which consists of such things as applying siding, installing storm windows and doors. You indicated that typically the cost does exceed \$10,000.00, but these individuals are presently not licensed by your Commission. Therefore, you have raised the question as to whether the Commission could issue a limited license which would restrict these individuals to performing such jobs as above referenced.

As you are aware, 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 (3) floors in height and which does not have more than sixteen (16) 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 \$10,000.00.’ [Section 40-59-10, Code of Laws of South Carolina](#), 1976.

[Section 40-59-70 of the 1976 Code](#) of Laws requires the annual licensing of individuals within the definition of a residential home builder. Pursuant to [Section 40-59-80 of the 1976 Code](#) of Laws, an examination of an individual desiring to be licensed by the Commission as a residential home builder is mandated. My research has not indicated any provisions which dictate separate examinations or examinations not as comprehensive as others nor any specific authority for licensing individuals to do limited work. The only license that is referenced is the license to engage in residential home building. A review of the rules and regulations of the Residential Home Builders Commission, and particularly Rule 106-4, similarly indicates that one examination is provided, successful completion of which is required prior to being licensed as a residential home builder. Pursuant to the above, to engage in any work within the definition of a residential home builder, whether it is totally new construction or remodelling and repair work, if the cost exceeds \$10,000.00, an individual must be licensed as a residential home builder.

The S. C. Licensing Board for Contractors specifically provides by their rules and regulations that examinations may be taken in various areas of contracting. As you are aware, pursuant to such regulations, general contractors are classified for licensing in four major classifications: highway, building, public utilities, and specialty. Mechanical contractors are classified for licensing in five fundamental branches of construction, namely, plumbing, heating, air conditioning, electrical, and lightning protection work. Pursuant to Rule 29-5, the Contractors Licensing Board

*2 ‘ . . . shall conduct a written examination of all applicants to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics or other similar matters pertaining to the contracting business. If the result of the examination of

applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general or mechanical contractor in the State of South Carolina as provided in the certificate.'

Pursuant to Rules 29-7 and 29-8, limitation groups as to certain classifications and monetary amounts are referenced for mechanical and general contractors for the purpose of licensing individuals to perform a certain type of work the cost of which is within a specific monetary amount. Therefore, pursuant to the above, the Contractors Licensing Board has by regulation established that licenses in certain categories of mechanical and general contracting may be granted by their Board to individuals desiring to do a particular phase or phases of contracting work.

It would appear that presently the Residential Home Builders Board is without authority to issue a limited license. However, if the Commission desired to provide separate licenses in varying classifications, the Commission could consider issuing a regulation which would provide for such varying licenses. Of course, this would require compliance with the Administrative Procedures Act. I would be happy to discuss this with the Commission at their next meeting.

You have also asked whether the Commission can require a licensed builder to assume a particular job after the builder, who was performing the work, had his license revoked by the Commission. You indicated that typically a builder may have three or four houses under construction at the time his license is revoked. A review of the code sections pertaining to the Residential Home Builders Commission and the rules and regulations of the Commission provide no clear answer to your question. However, [Section 40-59-130 of the 1976 Code of Laws](#) does state in part that:

'Any residential home builder who undertakes or attempts to undertake the business of residential home building without first having procured a valid license which is neither expired or been revoked . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars or imprisoned for not less than thirty days.'

It is apparent that the criminal penalty does not arise unless a builder 'undertakes or attempts to undertake' the business of home building without having a valid license. It would seem therefore that as to a builder who has already begun construction, an argument may be made that the criminal penalties would not apply for the reason that at the time the began construction he was validly licensed. [Section 40-59-130](#) also allows for injunctive action against a builder who constructs without a valid license. Such Section further states in part:

*3 'Whenever it shall appear to the Commission that any residential home builder has or is about to violate the provisions of this chapter the Commission may in its own name petition the court of common pleas of the county wherein the violation occurred or is about to occur to issue a temporary restraining order enjoining such violation of this chapter pending a full hearing to determine whether or not the injunction should be made permanent.'

It likewise would seem inappropriate to seek injunctive relief against a builder for conduct that he properly entered into while being validity licensed. It would appear therefore that the more proper course for the Commission to pursue would be that at the time an order is issued revoking or suspending a residential home builder's license that there be included in the order the statement that the builder may complete only those homes presently under contract in which construction has actively been commenced. It should also be explained that the builder could not undertake or contract to undertake any additional construction until he became validity licensed again. It also appears that this would be the best course inasmuch as in most instances the builder is responsible under contract to complete a particular house and to deny him the right to complete that house on the basis of his license being revoked would be improper. I would assume that this recommended action would provide an adequate means of handling this type of problem in most instances and unless there is a builder involved who has a vast number of houses under construction this would be the course that I would recommend. Again, this is a point that would probably be best discussed by the Commission at their next meeting.

If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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