



ALAN WILSON
ATTORNEY GENERAL

March 20, 2017

The Honorable Chip Huggins, Member
South Carolina House of Representatives
District No. 85
308 Wayworth Court
Columbia, SC 29212

Dear Representative Huggins:

Attorney General Alan Wilson has referred your letter dated February 23, 2017 to the Opinions section for a response. According to your letter, you request an opinion regarding whether the South Carolina Manufactured Housing Board (SCMHB) has statutory authority to require licensed manufactured home retail dealers, retail salespersons, contractors, installers, and repairers (“Licensees”) to complete continuing education requirements in order to maintain their respective manufactured housing licenses. By way of background, you explained that the SCMHB desires to require continuing education requirements for its Licensees as a condition of continued licensure. You explained that as the quantity and complexity of rules and regulations applicable to the manufactured housing industry, and therefore to its Licensees, has significantly increased in recent years, in addition to significant safety issues in the industry both to the public as well as to the Licensees, the SCMHB believes it would be not only beneficial, but also prudent, to mandate continuing education requirements for its Licensees.

The South Carolina Manufactured Housing industry is administered by the Division of Professional and Occupational Licensing, South Carolina Department of Labor, Licensing and Regulation (LLR)¹ and governed by the South Carolina Uniform Standards Code for Manufactured Housing.² Unless otherwise provided in the Uniform Standards Code for Manufactured Housing, Board regulation of professions and occupations³ specifically applies to the regulation of manufactured home manufacturers, retail dealers, sales persons, and contractors, installers, and repairers. S.C. Code Ann. § 40-29-5. In the event of conflict between the South Carolina Uniform Standards Code for Manufactured Housing and Board regulation of professions and occupations,⁴ the provisions of the Uniform Standards Code for Manufactured Housing control. S.C. Code Ann. § 40-29-5.

¹ S.C. Code Ann. § 40-1-40.

² Uniform Standards Code for Manufactured Housing, S.C. Code Ann. §§ 40-29-5 to -380.

³ See S.C. Code Ann. §§ 40-1-10 to -220.

⁴ Id.

With regard to your question concerning whether the SCMHB has authority to require licensed manufactured housing retail dealers, retail salespersons, contractors, installers, and repairers to complete continuing education requirements in order to maintain their required manufactured housing licenses,⁵ we look to relevant statutory authority. First, we note that S.C. Code Ann. § 40-1-70, which addresses the powers and duties of regulatory boards and specifically applies to the SCMHB,⁶ provides:

The powers and duties of regulatory boards include, but are not limited to:

- (1) determining the eligibility of applicants for examination and licensure;
- (2) examining applicants for licensure including, but not limited to:
 - (a) prescribing the subjects, character, and manner of licensing examinations;
 - (b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;
- (3) establishing criteria for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;
- (4) adopting a code of professional ethics appropriate to the profession or occupation which it licenses or regulates;
- (5) *evaluating and approving continuing education course hours and programs;*
- (6) conducting hearings on alleged violations of this article and regulations promulgated under this article;
- (7) resolving consumer complaints, where appropriate and possible;
- (8) disciplining persons licensed under this article in a manner provided for in this article;
- (9) promulgating regulations which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1-23-30.

S.C. Code Ann. § 40-1-70 (emphasis added). As this Office has noted, “[t]he cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent,” and “[t]ypically

⁵ S.C. Code Ann. § 40-29-30 provides licensure requirements for manufactured home retail dealers, salespersons, manufacturers, contractors, installers, and repairers.

⁶ S.C. Code Ann. § 40-1-40(B).

legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance.” E.g., Op. S.C. Att’y Gen., 2010 WL 4391640 (Oct. 7, 2010) (internal citations omitted). Accordingly, it is this Office's Opinion that the plain words of the statute provide authority for the SCMHB to require licensed manufactured home retail dealers, retail salespersons, contractors, installers, and repairers to complete continuing education requirements in order to maintain their required manufactured housing licenses.

Further, the Uniform Standards Code for Manufactured Housing enumerates the applicant requirements for licensure as follows: “An applicant for licensure shall:

- (1) demonstrate financial responsibility as required by Section 40-29-95;
- (2) for a retail dealer, provide a financial statement reviewed by a licensed certified public accountant;
- (3) not have engaged illegally in the licensed classification;
- (4) demonstrate familiarity with the regulations adopted by the board concerning the classification for which application is made;
- (5) if a corporation, have complied with the laws of South Carolina regarding qualification for doing business in this State or have been incorporated in South Carolina and have and maintain a registered agent and a registered office in this State;
- (6) submit proof of registration with the Department of Revenue and submit a current tax identification number;
- (7) where applicable, pass an examination administered by the board or its designated test provider in the license classification for which application is made;
- (8) *where applicable, complete training as described by the board.*”

S.C. Code Ann. § 40-29-200(B)(1)-(8) (emphasis added). Also, the statutory scheme governing the manufacturing housing industry further contemplates training in the industry, as it provides that “[n]o manufactured home retail dealer or salesperson, contractor, installer, or repairer may be issued a license until the person or representative of the entity successfully completes any training prescribed by the board.” S.C. Code Ann. § 40-29-210(D). While technically applicable to license applicants, S.C. Code Ann. § 40-29-200(B)(8) and § 40-29-210(D) demonstrate a legislative intent to promote training in the industry, as opposed to contradicting any training requirements, making application of these statutes to license renewals, as well as applicants, rational and-compliant with legislative intent.

Additionally, the South Carolina General Assembly has declared, due to the possible “hazards to the life and safety of persons and to the safety of property unless properly manufactured,” as well as “the possibility of defects not readily ascertainable when inspected by purchasers,” it to be “the policy and purpose of this State to provide protection to the public against those possible hazards and for that purpose to forbid the manufacture and sale of new manufactured homes which are not constructed so as to provide safety and protection to their owners and users and further to require that the business practices of the industry are fair and orderly.” S.C. Code Ann. § 40-29-330. Thus, the SCMHB's proposed implementation of mandatory continued education requirements for its Licensees also comports with South Carolina's policy to protect the public from the possible hazards to life, safety, and property from manufactured homes which are not safely and properly constructed, see S.C. Code Ann. § 40-29-330, as well as the purpose of the various professional and occupational licensing boards within the LLR, which is to “protect the public at large through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners.” S.C. Code Ann. § 40-1-40 (2011 & Supp. 2015).

In a somewhat comparable situation, this Office rendered an Opinion concerning the South Carolina Nursing Board's authority to require licensed nurses in South Carolina to submit to a state and federal finger-print based criminal background check. Op. S.C. Att'y Gen., 2010 WL 3505055 (Aug. 30, 2010). In that Opinion, we enumerated the powers and duties of regulatory boards, as set forth in S.C. Code § 40-1-70, as well as additional powers and duties of the Board of Nursing.⁷ We particularly noted that the powers and duties of the Board of Nursing included, inter alia, the authority to “develop minimum standards for continued competency of licensees continuing in or returning to practice;” “use minimum standards as a basis for evaluating safe and effective nursing practice;” and “collect any information the board considers necessary, including social security numbers or alien identification numbers, in order to report disciplinary actions to national databanks of disciplinary information.” S.C. Code § 40-33-10(I)(2),(8),(11) (Supp. 2009). We determined, based on, inter alia, the powers and duties of the Board of Nursing cited supra, that the South Carolina Nursing Board “implicitly ha[d] the authority to require licensed nurses to participate in a finger-print based criminal records check.” Op. S.C. Att'y Gen., 2010 WL 3505055 at *3 (Aug. 30, 2010). We further stated that “[t]he authority of an administrative body to enact rules and regulations within the scope of the law governing the administrative agency is clearly established.” Id. at *2. In the Opinion of this Office, the SCMHB plainly has authority to require continuing legal education for its Licensees pursuant to S.C. Code Ann. § 40-1-70(5). Furthermore, the SCMHB has such authority implicitly as well, as “it is not to be doubted that [a governmental body of limited powers] possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it.” Beard-Laney, Inc. v. Darby, 213 S.C. 380, 389, 49 S.E.2d 564, 567 (1948).

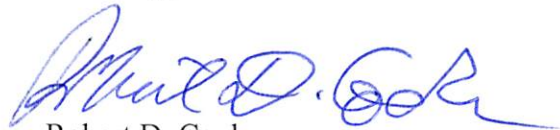
⁷ S.C. Code § 40-33-10(I).

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Conclusion

It is the opinion of this Office that the plain words of the statute, S.C. Code Ann. § 40-1-70(5), which express clear legislative intent, provide the SCMHB authority to mandate continuing education requirements for its Licensees. It is also our opinion that the South Carolina Uniform Standards Code for Manufactured Housing do not conflict with S.C. Code Ann. § 40-1-70(5). Furthermore, in this Office's opinion, the SCMHB also possesses implicit authority to mandate such continuing education requirements as such power is necessary in order to effectively exercise its express powers.

Sincerely,



Robert D. Cook
Solicitor General