

1975 WL 29475 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1975

***1 In Re: Commission Act, Various Questions**

Mr. John T. Watkins
Director
South Carolina
Residential Home Builders Commission
1801 Charleston Highway
Cayce, South Carolina

Dear Mr. Watkins:

This letter will confirm a two hour discussion at Hilton Head Inn on Saturday, February 1, with Mrs. Linda Todd, you, Mr. R. D. Walker, and Mr. Lou Gittlemen, relative to certain questions and problems that have arisen relative to the Homebuilders Act. The Commission had extended to me through you an invitation to attend such meeting. These subjects were discussed:

Disposition of Monies

Ref: Act (Sec. 7, last sentence). It appears that there is some thought that any Commission monies remaining at the end of the fiscal year must be paid into the State's general fund and may not thereafter be used for Commission purposes.

Comment: I do not so interpret the subject provision. All State funds are paid into the State Treasury for expenditure according to lawful appropriation. In my opinion, all Commission funds paid into the Treasury remain there for lawful expenditure for Commission purposes unless and until the General Assembly directs otherwise. Possibly, it would be well to clarify the subject sentence by amendment to read:

'All license fees collected by the Commission shall be paid into the State Treasury for lawful expenditure under the terms of this Act.'

Sub-contractors

Amendment to the Act would be necessary to require licensing of sub-contractors. It has been suggested that all sub-contractors contracting for work in excess of \$500 be included, and that it be provided that each be required to file a \$1,000 commercial surety bond for the benefit of the licensed Homebuilder who might be damaged by default.

Perhaps some thought should be given to a bond that would protect materialmen and laborers of the sub-contractor.

It was further suggested that sub-contractors subject to licensing be limited to:

1. Plumbing
2. Electrical
3. Painting

4. Heating and Air-Conditioning

5. Roofing

Homebuilders Bond

There is substantial question that the bond form now in use by the Commission [Section 7(b)] permits legal action against the bonding company by a third-party beneficiary, viz., a homeowner. The obligee under the present bond is the Commission, and the language of the bond does not set forth that action may be brought by the damaged party - - the homeowner.

In my opinion, the bond should spell out clearly that a damaged homeowner is entitled to bring legal action thereunder.

Expenses of Seminars

If it is desired to expend Commission funds to conduct seminars for licensees under the Act, such authority should be set out clearly in the language of the Act.

Extent of Homebuilder's Authority

Ref.: (Section 14 of Act).

It is my opinion that Section 14 of the Act means that a licensed homebuilder may construct residential buildings or structures which are not more than three floors in height and do not contain more than sixteen units, without the necessity of obtaining a general contractor's license, even though the cost exceeds \$30,000.

Yours very truly,

***2** Joseph C. Coleman
Deputy Attorney General

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