

1975 WL 29738 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1975

**\*1 Re: initial enforcement of county zoning ordinances adopted pursuant to Sections 14-350.16 et seq. of the Code, as amended**

Sheriff James R. Metts  
Lexington County Sheriff  
Lexington, South Carolina 29072

Dear Sheriff Metts:

You have inquired of this office whether or not a Zoning Ordinance of Lexington County creates sufficient authority for the Sheriff's Office to assist the zoning administrator in the initial enforcement process.

The Zoning Ordinances of Lexington County were enacted pursuant to Section 14-350.16 through Section 14-350.27 of the Code of Laws of South Carolina, as amended. We proceed to answer this question assuming the validity of this county ordinance. Section 14-350.25 provides for the enforcement of these ordinances as follows:

'The governing authorities of municipalities or counties may provide for the enforcement of any ordinance or resolution adopted pursuant to the provisions of this chapter by means of the withholding of permits and for such purpose may establish and fill the position of building official or other administrative officer, as appropriate, individually or jointly, when no such position presently exists. From and after the establishment of such position and the filling of the same under the provisions of this chapter, it shall be unlawful to construct, reconstruct, alter, change the use of or occupy any land, building or other structure without first obtaining the appropriate permit from such official and such official shall not issue any permit unless the requirements of this chapter and of any ordinance or resolution adopted pursuant to it are complied with. A violation of any ordinance or resolution adopted pursuant to the provisions of this chapter is hereby declared to be a misdemeanor under the laws of the State and, upon conviction thereof, an offender shall be punished in the discretion of the court. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted, or maintained, or any building, structure or land is or is proposed to be used in violation of any ordinance or resolution adopted pursuant to this chapter, the building official or other appropriate administrative officer, municipal or county attorney or other appropriate authority of the municipality or county or any adjacent or neighboring property owner who would be specially damaged by such violation, may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day such unlawful erection, construction, reconstructions, alteration, conversion, maintenance, or use continues shall be deemed a separate offense.'

It would appear that this provision envisions the enforcement of the ordinances by 'means of the withholding of permits' by the building official or an administrative officer. In addition the building official or administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county, or any adjacent or neighboring property owner who would be specially damaged by such violation may institute an injunction or mandamus action to correct any such violation.

**\*2** The section quoted hereinabove does not appear to contemplate the Office of Sheriff in the initial enforcement process. In this regard the following is appropriately quoted from 101 C.J.S. Zoning § 201 (1958):

‘Particular persons or bodies are generally designated by statutes or ordinances, within stated limits, to take the necessary steps to carry into effect, and administer, zoning regulations . . .’

And in 101 C.J.S. Zoning § 202 (1958) is found the following:

‘The powers, duties, and authority of particular bodies or officials charged with the administration of the zoning regulations are such as are conferred on them by the controlling legislative provisions.’

The procedure followed in [Wells v. Finley](#), 260 S.C. 291, 195 S.E.2d 623 (1973), which involved a Greenville County zoning regulation also adopted pursuant to Sections 14-350.16 et seq. of the Code, is enlightening. The initial step in the case was an order issued by the Zoning Administrator directing Finley to remove two ponies from a lot because such was in violation of a zoning ordinance. Finley appealed to the Board of Zoning Appeals, which affirmed the decision of the Zoning Administrator. When Finley failed to comply with the order of the Board, the Zoning Administrator then commenced an action in the Circuit Court seeking an injunction requiring the former to comply with said order. The injunction was issued by the Circuit Judge, from which Finley appealed to the Supreme Court where the decision of the trial court was affirmed.

In light of the foregoing, it is the opinion of this office that enforcement of the Lexington County zoning ordinance in question should be initiated by use of the procedures in Section 14-350.25 of the Code of Laws of South Carolina, as amended.

In the event that this office can be of further assistance, please do not hesitate to call upon us.

Very truly yours,

Sidney S. Riggs, III  
Assistant Attorney General

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