1975 WL 28886 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 5, 1975

***1** Wallace S. Murphy, Esq.
General Counsel
South Carolina Public Service Authority
P. O. Box 398
Moncks Corner, S. C. 29461

Dear Sir:
This is to reply to your inquiry into whether a county building inspector can require a building permit of the Public Service Authority's electrical substations. Specifically, your question concerns building permits issued by the Grand Strand Flood District in Horry County. The District was established by Act No. 1857 of the 1972 Joint Acts and Resolutions which requires, inter alia, that all buildings in Horry County which cost in excess of five hundred dollars have a permit issued and fee paid prior to construction.

First, there is no mention in the Public Service Authority's creating statute, Code of Laws of South Carolina (1962), § 59-1, et seq., of whether the Authority's buildings are subject specifically to county building regulation. There is exemption given, in § 59-8, from all State and local 'taxes and assessments'. But a building permit does not constitute a tax or assessment even though it involves the payment of a fee. A governmental charge for raising revenue is a 'tax'. Columbia Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.E. 211 (1927). On the other hand, a permit is a privilege granted by 'competent authority' to do an act which without the permit would be illegal. Heslep v. State Highway Department of South Carolina, 171 S.C. 186, 171 S.E. 913 (1932). 53 C.J.S. Licenses § 1. Thus the Authority cannot claim exemption from the building regulation as part of the exemption from taxation, since the building regulation requires permits without which construction is unlawful under § 10 of Act No. 1857. Then also, even though the building permit requirement resembles a 'tax or assessment' in that it raises money to be used for a public purpose, it cannot be deemed one because it does not charge the fee as a condition precedent to doing business as would a tax. Rather, the aim of the permit requirement is to requirement is to regulate the construction—not to raise revenue. This is evidenced by the fact that the buildings plans are perused and sites visited for inspection. Thus it is exactly opposite the situation which was Western Union Tel. Co. v. Town of Winnsboro, 71 S.C. 231, 50 S.E. 870 (1904), where the provision in question was held to be a tax, rather than a permit or license, because the payment of a sum was a condition precedent to doing busing and gave thereafter the right to carry on the business without any further regulation.

However, the issue does not end here. The enabling act giving counties the general power to adopt building codes, § 14-400.581, as amended, Cumm.Supp.) exempts from regulation the construction of transmission facilities of a public or private utility. Your specific question concerns the Authority's 'substations'. It would seem therefore that they would be exempt from building regulation under § 14-400.581, as amended (1974 Cumm.Supp.), if it can be said that the will of the legislature was expressed by that law to the effect that counties should not impose building code requirements upon utility substations, and it should make no difference whether those requirements are enforced in Horry County by the Flood District or some other official under the county's government.

***2** Act No. 1857 (1972) omits totally the matter of its applicability to utility facilities. It is well-established that the intent of the legislature controls the construction of all statutes and that that intent must be ascertained from the 'fourcorners' of the instrument. Hence the general rule is that a matter omitted cannot be read into a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). 82 C.J.S. Statutes § 328. But all statutes are presumed to be enacted by the

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legislature with full knowledge of the existing condition of the law, and so the meaning and effect of one statute must be determined with reference to that of other statutes in pari materia so as to construe them together into one integrated system of law. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1932). Moreover, a statute not in pari materia but which is on a cognate subject may be consulted. Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951).

The question thus becomes whether § 14-400.581 is a statute in pari materia or is on a cognate subject, with Act No. 1857 (1972). It is neither. To be in pari materia the law must relate to the same subject or have the same general purpose. Southern Ry. Co. v. South Carolina State Highway Dept., 237 S.C. 75, 115 S.E.2d 685 (___); Spartanburg County v. Arthur, 180 S.C. 81, 185 S.E. 486 (___); Gregg Dyeing Co. v. Query, 166 S.C. 117, 164 S.E. 588, aff'd. 286 U.S. 472, 52 S.Ct. 631, 76 L.Ed. 1232 (___). In the present situation the only thing similar about the two statutes is that they both use building code regulations as the means of achieving some goal. But that goal in one statute is flood control while in the other it is the prevention of unsafe or unsanitary buildings. Thus the building code regulation is only the means to some end, not the end itself, and is only the means to two entirely different ends.

Application of the same reasoning leads to the conclusion that § 14-400.581 and Act No. 1857 are not on cognate subjects and hence the former cannot be used to ascertain the proper construction of the latter. Moreover, statutory construction by reference to a statute on a cognate subject in this jurisdiction has been employed only where words in a statute were challenged as being wrong because of clerical error. Thus the imminent Justice Oxner in Fishburne v. Fishburne determined that the word 'now' in a statute actually was meant to be the word 'not' because only by such a construction could the statute harmonize with existing law on the same subject. But in the present situation no such question of language error or even of ambiguity arises. In the present situation, rather, the question which arises is whether the one statute's words are to be added to those of another statute which entirely omits treatment of the matter in issue. Thus it is clearly distinguishable from Fishburne.

Finally, it may be argued that the case of Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), stands for the proposition that where the true intention of the Legislature is not expressed by language employed in a statute, the legislature intention can be accompanied only by departing from the actual words of the statute; and thus in the present case the actual words in the statute creating the Flood District must be supplemented by those in the county building regulation enabling act, § 14-400.581, which would exempt the Authority's substations from building code regulation. However, Bearden makes clear that such a construction technique is allowable only when the obvious legislature intention is met in accord with the actual words used in a statute. In that case, therefore, the law which allowed baseball to be played on Sunday within an 'army' base was held to also mean within an 'air-force' base. As such, the case is limited to its quite circumspect fact situation and cannot be applied to the situation here in question.

***3** The conclusion to be reached, therefore, is that the intent of the Legislature, as ascertained by Act No. 1857 of the 1974 Joint Acts and Resolutions, cannot be said to have been to exempt the Authority's substation facilities from building code regulation since the matter is entirely omitted and the Act requires that the regulations apply to 'any construction' within the District.

Sincerely,

M. Elizabeth Crum
Assistant Attorney General

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