

1974 WL 27755 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 14, 1974

*1 A portable tobacco barn is not a building within the meaning of Act 806, Acts of 1964.

Honorable Robert S. Floyd
Florence County Tax Assessor
Florence County Court House
Florence, South Carolina 29501

Dear Mr. Floyd:

Reference is made to your request for the opinion of this office of whether a building permit is required to be obtained for a 'portable bulk tobacco curing barn.' The permit is required by the provisions of Act 806, Acts of 1964, and Section 1 of the same provides in part as follows:

'Any person who builds, contracts for or assembles any building or construction in Florence County * * * shall first secure a permit * * *.'

The key phrase is therefore 'building or construction' and it is assumed that the portable barn is completely assembled and 'portable' with no intention for the same to be affixed to and become a part of the realty on which it is placed.

The word 'building' has no fixed and invariable meaning; in example, it is stated in 13 Am. Jur. 2d, Building, Section 1, that:

'A 'building' in the usual and ordinary acceptance of the word, is a structure designed and suitable for habitation or sheltering human beings and animals, sheltering or storing property, or four uses and occupations for trade or manufacture. As used in statutes, the meaning generally depends on the particular subject and its connection with other words, and varies in practically every case.'

It has been held that the word 'build' may be used in the sense of obtain, secure, or acquire, as well as ordinary meaning.' Verner v. Muller, 89 S. C. 545, 72 S. E. 393. The definition in Webster has been favorably quoted.

'The word 'building' is defined by Webster as 'that which is built; a fabric framed and designed to stand more or less permanently.'" Brown v. Sikes, 188 S. C. 288, 198 S. E. 854, Stevenson v. Board of Adjustment of City of Charleston, 230 S. C. 440, 96 S. E. 2d 456.

A 'building' generally denotes real property, however, the same may be personal property. Wells Fargo and Co. v. New Jersey, 207 F. 871, State v. Ebel, 15 P. 2d 233, 92 Mont. 413.

It appears that the administrative interpretation of the 1964 Act has been that it applies to real property and not personal property. Under such a construction, the portable barn would not be a building within the meaning of this Act. Such a construction is entitled to weight and is not to be overruled without cogent reason. Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S. C. 354, 60 S. E. 2d 682.

It is therefore the opinion of this office that a 'portable tobacco barn' is not a building within the meaning of Act 806, Acts of 1964. This opinion is fortified by the provisions of Section 46-100, et seq. that requires a license for mobile homes used as dwellings. If the provisions of the 1964 Act applied to the portable tobacco barn, then, in such an event, the owners of mobile homes would be required to obtain both the building permit and the license and such has not to the knowledge of this office been required by any county. Such, therefore, further evidences legislative intent that the 1964 Act apply to those 'buildings' that generally constitute real property.

Yours very truly,

***2** Joe L. Allen, Jr.
Assistant Attorney General

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