



ALAN WILSON
ATTORNEY GENERAL

July 30, 2020

Ms. D'Anne Haydel
County Attorney
Orangeburg County Attorney's Office
2015 Broughton St.
Orangeburg, SC 29115

Dear Ms. Haydel:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following question and offers the following analysis:

What local entities have jurisdiction to enforce the 2018 International Fire Code (the "Code") in the unincorporated areas of Orangeburg County?

...

Orangeburg County contains three (3) fire service districts. The City of Orangeburg (the "City") long ago established a fire service district to provide fire protection services within the City's boundaries (the "City District"). In accordance with a successful referendum in 1982, the County established a fire service district to provide fire protection services in a portion of the unincorporated area of the County near the Town of Santee (the "Santee District"). In accordance with a successful referendum in 1996, the County established a fire service district to provide fire protection services in the unincorporated areas of the County not served by the City or the Santee districts (the "County District"). At the time the County District was established, in accordance with its rights under State law, the City opted to include in its service district an area in the unincorporated County that forms a five (5) mile radius around the City's incorporated boundary (the "Unincorporated Donut Area").

On December 16, 2019, pursuant to South Carolina Code Annotated Section 6-9-10(A) (1976, as amended) (the "Statute"), County Council, the governing body of the County, enacted County Ordinance Number 2019-12-16-31 (the "Ordinance") adopting, inter alia, the Code for all unincorporated portions of the County. The County has not entered into any agreement with any local governmental entity or fire protection service to enforce the Code in the

unincorporated portions of the County. As a result, Code enforcement in the Unincorporated Donut Area and the Santee District remains with the County.

...

In general, fire service districts provide fire protection services such as prevention and suppression of fires within their districts. Providing fire protection services is not the same as providing Code enforcement. By statute, the Legislature specifically delegated Code enforcement to local governing bodies known as counties and municipalities. S.C. Code § 6-9-10(A).

The County has enacted the Code for the unincorporated areas of the County and has not entered into any agreement with other governmental entities to enforce the Code in the unincorporated areas of the County. As a result, the County is the sole local governmental entity that has the power to enforce the Code in the unincorporated areas of Orangeburg County. The fact that the Santee District provides fire services in a portion of the unincorporated area of the County and the City District provides fire services in the Unincorporated Donut Area does not transfer Code enforcement jurisdiction to those municipalities or districts.

Law/Analysis

It is this Office's opinion that a court would likely hold each county is responsible for enforcing the building codes, including the fire codes, within the unincorporated area of the county. See S.C. Code §§ 6-9-10(A), -30(A). As stated in the request letter, section 6-9-10(A) directs counties and municipalities to enforce the building codes adopted according to Chapter 9 of Title 6 of the South Carolina Code of Laws.

All municipalities, as defined by Section 5-1-20, and counties in this State shall enforce building, energy, electrical, plumbing, mechanical, gas, and fire codes, referred to as building codes in this chapter, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, classification, or removal of structures located within their jurisdictions and promulgate regulations to implement their enforcement. The municipality or county shall enforce only the national building and safety codes provided in this chapter.

Id. (emphasis added). This Office's July 5, 2006 opinion to the Sumter City-County Planning Commission explained the statutory process for building code adoption as follows:

Prior to 2003, the building code statutes required all municipalities and counties to adopt by reference the latest version of the building codes published or made

available by Southern Building Code Congress International, Inc. S.C. Code Ann. §§ 6-9-10; 6-9-50 (2004). In 2003, the Legislature amended these provisions and instead of requiring adoption of the Southern Building Code Congress International, Inc.'s building codes, these provisions now require municipalities and counties to enforce the building code as adopted by the South Carolina Building Codes Council (the "Council"). S.C. Code Ann. § 6-9-10 (Supp. 2005). Section 6-9-50 mandates the Council adopt the latest edition of the building code published by the International Code Council, Inc.

Op. S.C. Att'y Gen., 2006 WL 2382444, at 3 (July 5, 2006).¹ Although the opinion used "building code" to refer jointly to the listed codes, the fire code is explicitly named as one of the nationally recognized codes that the Council is directed to adopt.² The code provisions that relate to "the qualification, removal, dismissal, duties, responsibilities of, and administrative procedures for all building officials, deputy building officials, chief inspectors, other inspectors, and assistants" are inapplicable unless a county or municipal governing body affirmatively adopts them. S.C. Code § 6-9-50; see also S.C. Code § 6-9-60 (authorizing municipal and county governing bodies to adopt certain nationally recognized codes).

Section 6-9-30 additionally requires that counties and municipalities appoint building officials who perform inspections and enforce the building codes.

Each county shall appoint a building official or contract with other political subdivisions as authorized in Section 6-9-20 so that the unincorporated area of the

¹ See also Donevant v. Town of Surfside Beach, 422 S.C. 264, 265, 811 S.E.2d 744, 745 (2018), reh'g denied (Apr. 17, 2018).

The South Carolina Building Codes Council is responsible for adopting the building code that applies throughout the state. *See* S.C. Code Ann. §§ 6-9-40(A), 6-9-50(A) (Supp. 2017); 1 S.C. Code Ann. Regs. 8-236 (2011). ... Each municipality is responsible for enforcing this building code in its jurisdiction. *See* S.C. Code Ann. § 6-9-10(A) (Supp. 2017) (requiring all municipalities enforce the building code adopted by the South Carolina Building Code Council).

² Section 6-9-50(A) reads:

The council shall adopt by reference and amend only the latest editions of the following nationally recognized codes and the standards referenced in those codes for regulation of construction within this State: building, residential, gas, plumbing, mechanical, fire, and energy codes as promulgated, published, or made available by the International Code Council, Inc. and the National Electrical Code as published by the National Fire Protection Association.

county is under the jurisdiction of a building official. Each municipality shall appoint a building official or contract for a building official within the municipal limits. Based on the needs established by each municipality or county, the building official or appointing authority may appoint and employ other personnel and assistants necessary to perform the required inspections and duties and may prescribe fees for construction permits and inspections.

S.C. Code Ann. § 6-9-30(A). Notably, the statute places “the unincorporated area of the county” under the “jurisdiction” of the county appointed building official, while the building official appointed by a municipality has jurisdiction “within the municipal limits.” *Id.* Additionally, section 6-9-20 permits political subdivisions to contract with other political subdivisions for building code enforcement. The South Carolina Building Codes Council is also authorized to assist municipalities and counties with arranging for municipalities, counties, or consultants to provide enforcement services upon written request. S.C. Code Ann. § 6-9-20. With this statutory framework in mind, this opinion will next apply the rules of statutory construction and examine relevant case law to determine which entities are responsible for enforcing the fire code in the unincorporated area of a county.

Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute's language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, “[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they “are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Penman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010).

The plain language of section 6-9-10(A) requires counties and municipalities to enforce building codes within their respective “jurisdictions.” While jurisdiction is not defined within the statute, Black’s Law Dictionary defines it as “[a] government's general power to exercise authority over all persons and things within its territory” and “[a] geographic area within which political or judicial authority may be exercised.” JURISDICTION, Black's Law Dictionary (11th ed. 2019); see also American Heritage College Dictionary 737 (3d. ed. 1993) (defining “jurisdiction” as “the territorial range of authority or control.”). This construction of “jurisdiction” can be readily reconciled with the municipal and county building officials’ authority described in section 6-9-30(A). Specifically, a building official appointed or contracted with by a county is authorized to enforce the building codes in “the unincorporated area of the county” which corresponds with the geographic area where a county generally exercises its authority; similarly, a building official appointed or contracted with by a municipality is authorized to enforce the building codes “within the municipal limits.” See Op. S.C. Att’y Gen.,

1984 WL 249691, at 1 (October 2, 1984) (recognizing “the autonomy of a municipality within its borders and likewise ... the autonomy of the county within the unincorporated areas of the county.”). Therefore, based on the common understanding of the word “jurisdiction” and the related statutes within the same statutory scheme, it is this Office’s opinion that S.C. Code Ann. § 6-9-10(A) requires each county to enforce the building codes, including the fire code, within the unincorporated areas of the county.

Because the request letter describes the fire service areas of the City District and the Santee District to overlap with the County’s code enforcement jurisdiction and the letter further reasons that code enforcement is distinct from fire protection service, this opinion next addresses whether the restrictions on the areas that county fire protection services can serve has an impact on the area over which a county is required to exercise building code enforcement. Section 4-19-10 states that county governing bodies have the power to “establish, operate, and maintain a system of fire protection” and to “designate ... the areas of the county where fire protection service may be furnished by the county.” S.C. Code Ann. § 4-19-10(A) & (B). The statute excludes “those areas where fire protection is then being furnished by some other political subdivision” from a county’s service area “unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.” S.C. Code Ann. § 4-19-10(B). The South Carolina Supreme Court interpreted this limitation to protect the interests of cities and those persons who have contracted with them.

It is our view that S.C. Code § 4–19–10(b) protects the rights of cities and customers who have contracted for fire protection under § 5–7–60 and that, in the absence of an agreement, newly created county fire districts must exclude areas served by cities under contract.

City of Darlington v. Kilgo, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990). The Court recognized that municipalities or special purpose districts might only offer limited fire protection services within the unincorporated areas of a county, and held that the statute allowed for the joint administration of fire protection services and cost sharing to provide “full fire protection” by the county and the other political subdivision. Kilgo, 302 S.C. at 44–45, 393 S.E.2d at 379.

While it may seem sensible to apply the same limitations on county fire service areas to fire code enforcement, it is this Office’s opinion that the jurisdiction of a political subdivision, as established in S.C. Code Ann. § 6-9-30(A), dictates which body is responsible for building code enforcement. The Kilgo Court’s holding regarding the limitations on a county fire district service area was “constrained” by the language of the statute. Kilgo, 302 S.C. at 43, 393 S.E.2d at 378. The General Assembly did not include similar constraints to describe a county’s jurisdiction to enforce building codes. Rather, the General Assembly required both municipalities and counties to either appoint building officials or otherwise contract with another political subdivision to enforce building codes. See S.C. Code Ann. § 6-9-30. As is discussed above, the unincorporated area of a county is under the jurisdiction of a county building official

for the purpose of building code enforcement, while a building official appointed by a municipality is responsible for enforcement within municipal limits. Id. Furthermore, the General Assembly chose not to use the term “service area” to describe the jurisdiction of municipalities and counties to enforce building codes as it has in many fire protection statutes. See Mathis v. Hair, 358 S.C. 48, 50, 594 S.E.2d 851, 852 (Ct. App. 2003) (explaining that the Court’s construction of the undefined term “service area” in a statute was “bolstered by the legislature’s use of the same definition in other fire protection statutes.”). Therefore, it is this Office’s opinion that a court would likely hold a county’s duty to enforce building codes in the unincorporated area of the county, including the fire code, is not impacted by the fire service areas served by other political subdivisions.

Lastly, there is a caveat to building code enforcement in Chapter 9 of Title 6 concerning persons who act under the authority of the State Fire Marshal. Section 6-9-5 includes statements of public policy of the State regarding building code enforcement and explains specific points of legislative intent. Subsection (C) states:

To further clarify the intent of the General Assembly, Chapter 9, Title 23 continues to apply to a person who may act under authority of the State Fire Marshal and that the allocation of inspection duties among local officials is not dictated by Title 6 but remains a matter for the local authority.

S.C. Code Ann. § 6-9-5. Chapter 9, Title 23 allows a chief of a fire department to exercise the powers of the State Fire Marshal “within the area of his service” as a “resident fire marshal.” S.C. Code Ann. § 23-9-30. This resident fire marshal authority is subject to yet another caveat; namely, that it “does not repeal, amend, or otherwise affect Chapter 25 of Title 5” which governs municipal corporate building code and fire prevention. Id. Within Chapter 25 of Title 5, section 5-25-120 requires the chief of a municipal fire department to act as the “local inspector of buildings for the city or town for which he is appointed.”³ Ultimately, when these statutes are read together, it appears that the General Assembly intended for a municipal fire chief to act as the resident fire marshal within his fire service area, while at the same time, intending that he only serve as building inspector within municipal limits. This construction remains consistent with the conclusion above that a county is required to enforce the building codes, including the fire code, within the unincorporated areas of the county.

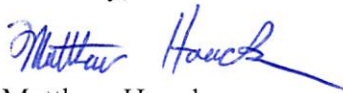
³ Section 5-25-120 additionally permits a city or town to appoint a local building inspector as follows:

The chief of a fire department shall also be the local inspector of buildings for the city or town for which he is appointed and shall perform the duties required herein and make all reports required by the State law, by city or town ordinances or by the State Fire Marshal. He shall make all inspections and perform such duties as may be required by the State Fire Marshal. But any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of the fire department shall be relieved of the duties herein imposed.

Conclusion

For the reasons discussed more fully above, it is this Office's opinion that a court would likely hold each county is responsible for enforcing the building codes, including the fire codes, within the unincorporated area of the county. See S.C. Code §§ 6-9-10(A), -30(A). Municipalities and counties are permitted to establish agreements to issue permits and enforce building codes. S.C. Code Ann. § 6-9-20. Municipalities and counties may also request assistance from the South Carolina Building Code Council to assist in arranging for consultants to provide building code enforcement services. Id. In the absence of such an arrangement, a building official appointed or contracted with by a county is authorized to enforce the building codes in "the unincorporated area of the county" which corresponds with the geographic area where a county generally exercises its authority. See S.C. Code § 6-9-30(A). Similarly, a building official appointed or contracted with by a municipality is authorized to enforce the building codes "within the municipal limits." Id.

Sincerely,



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REVIEWED AND APPROVED BY:



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