

1972 WL 25216 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 22, 1972

*1 Mr. F. G. Scurry
Watershed Projects Coordinator
Soil and Water Conservation Commission
2414 Bull Street
Columbia, South Carolina 29201

Dear Mr. Scurry:

You have inquired the following concerning Act No. 194, enacted by the 1971 General Assembly (71 Acts 197):

‘In Section 3 of Act No. 194, it reads:

‘The provisions of section 2 shall not apply to construction of single five-family residential dwellings—.’

‘My question is: Will the provisions of Section 2 apply to where a number of individuals purchased individual lots from a land developer to construct single residential dwellings or lots lying in an area commonly called a subdivision?’

The Act referred to authorizes counties to establish sediment control programs. Section 2 provides:

‘In any county which elects to establish a sediment control program,—no ground (shall be) broken for construction of any kind except as specifically exempted under this act until a county grading permit is issued to the person responsible for such —construction.

The Act does not define the phrase, ‘person responsible for such construction.’ I construe it to be applicable to the person, normally the owner, who builds, or who contracts to have built, a single-family residential dwelling. I do not feel that the phrase contemplates the contractor as being the ‘person responsible for such construction,’ unless the contractor happens to be constructing the dwelling for himself.

I also construe the Act to be applicable to residences to be occupied by a single family and, therefore, the word ‘single’ is applicable to the use to which the house is to be put, *i.e.*, whether it is designed for the use of a single family or more than a single family. The use of the hyphen between the word ‘single’ and ‘family’ clearly indicates this, showing that the exemption is directed to single-family dwellings and not to a limit of just one dwelling. This is of importance in considering whether the Act contemplates extension to subdivisions.

It is my opinion that, as long as single-family dwellings are involved, the Act is not applicable. The law must be strictly construed in that it is a criminal statute. This conclusion points out a loophole in the statute which should be remedied by an amendment so as to bring subdivisions within the scope of the law.

You additionally inquire as to whether, under the provisions of Section 4, the governing body of a county can select the qualified individual to certify the plan when a registered professional engineer or a professional soil conservationist is not available. Section 4 provides:

‘Each plan required by Section 2 of this act shall include a certification by a registered professional engineer or a professional soil conservationist that the plan is designed to contain silt on the property concerned to the maximum extent feasible.’

In my opinion, no discretion or authority is vested in any governmental body to provide for the certification of a plan by any except a registered professional engineer or a professional soil conservationist.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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