



ALAN WILSON
ATTORNEY GENERAL

June 17, 2021

Steve Willis
County Administrator
Lancaster County
P.O. Box 1809
Lancaster, South Carolina 29721-1809

Dear Mr. Willis:

We received your letter requesting an Attorney General's opinion regarding the application of building codes to roadside markets. Specifically, you ask "whether Lancaster County can require roadside markets to comply with building codes that have been adopted by the South Carolina Building Codes Council pursuant to South Carolina law?"

Law/Analysis

As you mentioned in your letter, this Office recently issued an opinion regarding whether local building codes are applicable to roadside markets. That opinion considered whether section 46-45-60 of the South Carolina Code (2017) prohibits the application of local building codes to roadside markets. Op. Att'y Gen., 2021 WL 1930601 (S.C.A.G. May 5, 2021). We concluded as follows:

Reading section 46-45-60 in isolation, we find it prohibits the application of any ordinance attempting to regulate the operation of an agricultural facility, which includes roadside markets. However, given the intent expressed by the Legislature in regard to chapter 45 of title 46, we are concerned the Legislature intended to limit application of this provision to ordinances that establish a basis for nuisance suits. Given this current ambiguity, we suggest the Legislature clarify section 46-45-60 to specify its application is limited to nuisances or that it applies to all ordinances despite the stated intent of the chapter. Short of such a legislative clarification, we advise you to seek clarification from a court to determine whether section 46-45-60 acts to preempt application of local building codes to agricultural facilities.

You now inquire as to whether state building codes apply to roadside markets. Initially, section 46-45-60 makes clear that it only prohibits local laws or ordinances that conflict with state law. Therefore, we do not find section 46-45-60 prohibits state law from applying to roadside markets.

Mr. Steve Willis
Page 2
June 17, 2021

As you mentioned in your letter, section 6-9-10 of the South Carolina Code (Supp. 2020) requires counties and municipalities to

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.

Section 6-9-40 of the South Carolina Code (Supp. 2020) authorizes the South Carolina Building Codes Council (the “council”) to “review, adopt, modify, and promulgate building codes referenced in Section 6-5-50” Section 6-5-50 of the South Carolina Code (Supp. 2020) specifies the council must adopt by reference and amend only the latest editions of the listed nationally recognized codes and standards for purposes of the regulation of construction in South Carolina. Accordingly, Lancaster County generally must enforce building codes adopted by the council.

However, section 6-9-65(B) of the South Carolina Code (Supp. 2020) prohibits the governing bodies of counties and municipalities from enforcing a nationally recognized building code “which regulates the construction or improvement of a farm structure.” Section 6-9-65(A) of the South Carolina Code (Supp. 2020) defines “farm structure” as “a structure which is constructed on a farm, other than a residence or a structure attached to it, for use on the farm including, but not limited to, barns, sheds, and poultry houses, but not public livestock areas. For purposes of this section, ‘farm structure’ does not include a structure originally qualifying as a ‘farm structure’ but later converted to another use.” Thus, the answer to your question depends upon whether the roadside market is considered to be a “farm structure.”

While the list of examples provided in section 6-9-65(A) does not specifically include roadside markets, we believe a court could find a roadside market is within the definition of a “farm structure.” “In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Adkins v. Comcar Indus., Inc., 323 S.C. 409, 411, 475 S.E.2d 762, 763 (1996). While we do not have the benefit of the facts surrounding a particular roadside market, we can imagine that a roadside market could be constructed on a farm and would not be considered part of a residence or any structure attached to a residence. While a roadside market is not likely to be a barn or a poultry house, it could in some cases be classified as a shed. Nevertheless, section 6-9-65(A) states the list of examples is not all inclusive and therefore could include other structures not specifically exempt from the statute.

Moreover, we believe roadside markets are generally considered important components of local farming operations. In fact, the South Carolina Department of Agriculture operates a Certified

Mr. Steve Willis
Page 3
June 17, 2021

Roadside Market Program and other code sections describe roadside markets as an “agricultural use” or an “agricultural operation.” S.C. Code Ann. §§ 46-19-210 et seq.; S.C. Code Ann. § 49-4-20(3)(k) (2008); S.C. Code Ann. § 46-45-20(B)(11) (2017). Accordingly, we believe a court could find a roadside market is a structure for use on a farm and therefore is exempt from enforcement pursuant to section 6-9-65(B). Nonetheless, the determination of whether a particular roadside market is considered a “farm structure,” exempting it from enforcement of nationally recognized building codes, is a question of fact. As we stated in a prior opinion, “questions of fact are outside the scope of an opinion of this Office.” Op. Att’y Gen., 1995 WL 805733 (S.C.A.G. Sept. 12, 1995). Therefore, we believe a court must ultimately determine whether a particular roadside market is a “farm structure” and therefore exempt from enforcement of state building codes by Lancaster County.

Conclusion

Section 6-9-10 of the South Carolina Code requires local governments to enforce state building codes. However, section 6-9-65(A) of the South Carolina Code exempts the application of state building codes to “farm structures.” While we believe a court could find a roadside market is a farm structure for purpose of section 6-9-45(A), this finding requires a factual determination of whether the roadside market meets the definition of a farm structure pursuant to section 6-9-65(A). As such, we believe it is best for a court to determine whether a particular roadside market is exempt from the application of state building codes under this provision.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General