



HENRY MCMASTER  
ATTORNEY GENERAL

February 26, 2009

David W. Epperson, Esquire  
Clarendon County Attorney  
Post Office Box 486  
Manning, South Carolina 29102

Dear Mr. Epperson:

We understand you desire an opinion of this Office concerning section 12-37-670(A) of the South Carolina Code. In your letter, you state:

In 2007, there were speculative houses built in Clarendon County that were issued Certificate of Occupancies (C.O.'s) by our building department. After receiving the C.O.'s and inspecting the properties, the Assessor placed the properties on the tax rolls as completed structures for the following tax year, 2008. The builder believes that although C.O.'s have been issued on the structures, this is not determinative of the structure being "completed and fit for the use for which it is intended" as stated in § 12-37-670(A).

Therefore, I ask that you provide an opinion as to (1) whether the issuance of a Certificate of Occupancy meets the intent and meaning of § 12-37-670(A), SC Code of Laws, 1976 as amended, allowing a new structure to be placed on the tax rolls or if it does not, (2) what is evidence to a County Tax Assessor that a new structure is "complete and fit for the use for which it is intended" so that it can be placed on the tax rolls as a new structure.

#### **Law/Analysis**

As you mentioned in your letter, section 12-37-670(A) of the South Carolina Code (Supp. 2008) determines when new structures must be listed on the tax rolls for assessment of property taxes. This provision provides: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended." S.C. Code Ann. § 12-37-670(A). While this office has not interpreted section 12-37-670(A) as it is currently codified, we issued several opinions interpreting its predecessor section 65-1620 of the South Carolina Code (1962). This

Mr. Epperson  
Page 2  
February 26, 2009

provision stated: "No new structure shall be listed or assessed until it is completed and fit for the use for which it is intended." S.C. Code Ann. § 65-1620.

A 1969 opinion of this Office addressed whether a building that is essentially complete, but has not been occupied by a tenant, should be included on the tax rolls. Op. S.C. Atty. Gen., December 2, 1969. We cited to section 65-1620, emphasizing that the statute requires the structure to be complete and fit for the use intended. Id. Although the building lacked some modifications and alterations required by the tenant, we concluded: "It is doubtful that the General Assembly intended the taxation of such buildings to be dependent upon occupancy by a tenant and, therefore, the building would be complete for the purposes intended by the owner when available for rental to the tenant and, under such circumstances, then taxable." Id.

In 1970, we considered whether a building that was complete with the exception of fixtures and minor addition is deemed complete for purposes of 65-1620. Op. S.C. Atty. Gen., March 12, 1970. We quoted the following language from an Oklahoma Supreme Court case stating when a building is considered complete:

'A building \* \* \* is 'completed' when the contractor has substantially complied with the terms of his contract, and the later work of supplying trifling items omitted or repairing defects or remedying inferior workmanship will not be considered as postponing the time limitation for filing liens. Taylor Bros. v. Gill, 259 P. 236, 126 Okl. 293. See also Vol. 8 Words and Phrases, page 390.

Id. Following the reasoning of the Oklahoma court, supported by our findings in the 1969 opinion cited above, we determined with the exception of "fixtures or minor additions, for example, bathroom fixtures, sanding or carpeting of floors, installation of some doors, such building is deemed to be complete for the use intended and should be listed and returned for ad valorem taxation." Id.

Lastly, in 1976, we addressed the issue of whether a building intended for use as a manufacturing plant that is complete, but not in use, should be listed as taxable property. Op. S.C. Atty. Gen., March 17, 1976. In discussing when a structure is considered complete, we stated:

The word 'complete' means finished; nothing substantial remaining to be done; brought to an end. See Black's Law Dictionary and Webster's New Collegiate Dictionary. The term 'fit for the use for which it is intended' in our opinion relates to the structure. In the case of Standard Motor Car Co. v. St. Amant, 134 So. 279, 18 La. App. 298, the term 'fit for purpose intended' was held to mean the ordinary general use rather than for use in any particular calling or business.

Id. Accordingly, we concluded that “the buildings which have been completed and which are ready for use are taxable although the manufacturing operation in which the buildings are to be used has not begun.” Id.

Although these prior opinions interpret section 65-1620 as it was previously codified, we believe the reasoning of these past opinions is instructive for interpreting what the Legislature meant when it required that structures be “complete and fit for the use for which it was intended” pursuant to section 12-37-670(A). Accordingly, we believe a structure is complete when it is finished and nothing substantial must be done and it can generally be used for its intended purpose. However, we also acknowledge that some modifications may need to be made or some fixtures may need to be added, but the building will be considered complete for purposes of section 12-37-670(A).

Section 12-37-670(A) does not specify that a certificate of occupancy is required to evidence that a structure is complete and fit for the use for which it is intended. Certificates of occupancy are generally issued by local governments and indicate that a particular structure complies with the locality’s building codes and zoning laws. Generally, local ordinances prohibit a building from being occupied until a certificate of occupancy has been issued. Moreover, our Court of Appeals acknowledge in a 2002 opinion that a business cannot legally occupy a structure in which no certificate of occupancy has been issued by the locality. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dep’t of Transp., 352 S.C. 113, 119, 572 S.E.2d 462, 466 (Ct. App. 2002). Thus, whether or not a certificate of occupancy has been issued could indicate whether a structure is complete and fit for the use for which it is intended.

Moreover, by employing the rules of statutory construction, we find further support for our conclusion that a certificate of occupancy could be used to determine a structure’s completeness. The primary rule of statutory construction is “to ascertain and effectuate the intent of the Legislature.” Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). In addition, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

In reading section 12-37-670 as a whole, we note that in section (B), giving counties the ability to list untaxed improvements to real property by the first day of the next calendar quarter after the certificate of occupancy has been issued, states: “A new structure must not be listed or assessed until it is completed and fit for the use for which it is intended, as evidenced by the issuance of the certificate of occupancy or the structure is actually occupied if no certificate is issued.” This provision indicates the Legislature’s belief that a certificate of occupancy is sufficient evidence of a structure’s completeness and fitness for its intended use. See also, S.C. Code Ann. § 27-31-30 (2007) (providing that completion of a proposed horizontal property regime is evidenced by the issuance of a certificate of occupancy). Accordingly, we believe that the issuance of a certificate of occupancy can be used to evidence a structure’s completeness and fitness for the use for which it is intended for purposes of section 12-37-670(A).

Mr. Epperson  
Page 4  
February 26, 2009

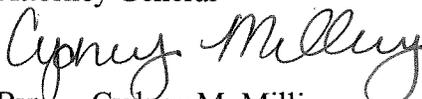
In your second question to us, you ask what evidence a County Tax Assessor should use in determining whether a new structure may be placed on the tax rolls. As we concluded above, a certificate of occupancy could provide a County Tax Assessor with such evidence. However, because the Legislature does not specifically require that evidence of a structure's completeness and fitness for its intended use be in the form of a certificate of occupancy, we believe that evidence of a structure's completeness and fitness for its intended use can be gained by other means as well. However, the statute does not speak to what other evidence may be considered. Thus, we cannot provide you a comprehensive list of items a court may consider in making this determination. Nonetheless, based on our prior opinions, we believe evidence of completeness may be gained by considering whether a contractor has substantially complied with the terms of his or her contract. Op. S.C. Atty. Gen., March 12, 1970. Likewise, a court may determine completeness based on whether any substantial part of the structure remains to be completed. Op. S.C. Atty. Gen., March 17, 1976. Furthermore, in considering whether the structure is fit for its intended use, a court would likely consider the general use of the structure. *Id.* Thus, we suggest that a County Tax Assessor consider these factors. However, we do not believe these factors are the only means by which completeness and fitness for use can be determined. Therefore, we are of the opinion that the County Tax Assessor must consider the facts before him or her to determine whether a structure meets the requirements of section 12-37-670(A).

### Conclusion

Based upon our analysis above, we believe a certificate of occupancy, while not required to be used, may be used as evidence that a structure is complete and fit for its intended use in accordance with section 12-37-670(A). Based on our prior opinions, a County Tax Assessor may consider other factors in making this determination, such as whether the contractor complied with the terms of the contract and whether the structure lacks any substantial additions or modifications. However, these factors are not exclusive and the County Tax Assessor must make a factual determination as to whether the structure is complete and fit for its intended use.

Very truly yours,

Henry McMaster  
Attorney General

  
By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General