

# The State of South Carolina



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April 13, 1989

The Honorable Charles R. Sharpe  
State Representative  
State of South Carolina  
310-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Sharpe:

I refer to your February 23, 1989 letter to this Office in which you requested an opinion on a February 7, 1989 letter from Citizens for Orderly Development in Aiken County, relating to the responsibilities of the Aiken County Planning Commission. The questions (from the standpoint of a legal opinion) appear to be: (1) whether a county planning commission is required to formulate a comprehensive plan and refer to the plan in regulating the subdivision of land, and (2) whether a county government must comply with regulations and/or ordinances which it has enacted.

In responding to the first question, it is appropriate to consider, as a whole, the purpose and intent of Chapter 7 of Title 6, "Planning by Local Governments," Code of Laws of South Carolina, 1976, as amended. Section 6-7-10, which declares the purpose of Chapter 7, provides, in part:

The intent of this chapter is to enable...counties...to preserve and enhance their present advantages, to overcome their present handicaps, and to prevent or minimize such future problems as may be foreseen. To accomplish this intent local governments are encouraged to plan for future development; to prepare, adopt, and from time to time revise, a comprehensive plan to guide future local development....Any county...may, but shall not be required to, exercise any of the powers granted by this chapter. Whenever such a governing authority shall elect to exercise any of the powers granted by this chapter, such powers shall be exercised in the manner hereinafter prescribed. (emphasis added)

Under the foregoing language, it appears that a county government is encouraged but not mandated to adopt a comprehensive plan. However, if a county elects to create a county planning commission (under §6-7-320), the planning commission's function is to prepare a comprehensive plan. Section 6-7-340 states:

It shall be the function of the local planning commission upon the authorization of the governing authority...to prepare the comprehensive plan and program for the physical, social and economic growth of its jurisdiction in order to promote the public health, safety, morals, convenience, prosperity, or the general welfare as well as efficiency and economy in the development of its jurisdiction. The comprehensive plan and program shall include recommended means of implementation and shall be based upon careful and comprehensive surveys and studies of existing conditions and probable future development....(emphasis added)

This section goes on to list specific powers of a planning commission, in the discharge of its responsibilities or function. Assuming that a planning commission has been authorized by a governing authority to prepare a comprehensive plan, it then appears to be incumbent upon the planning commission to prepare such a plan in order to fulfill its function. Black's Law Dictionary defines "function":

[Function]...means to perform, execute, administer. The nature and proper action of anything;...Office; duty....The proper activities or duties of municipality....

Black's Law Dictionary, 5th Ed., 1979, pp. 605-606

Article 7 of Chapter 7 addresses the manner in which a comprehensive plan is to be formulated, approved and adopted. Section 6-7-510 reiterates that, "[i]t shall be the duty of a local planning commission to prepare the comprehensive plan for the long-range development of its area and to perfect it from time to time...." and requires the planning commission to review the plan "...not less than once every five years...." In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The word "shall" as used in statutes is generally imperative or mandatory, particularly when addressed to public officials or where a public interest is involved. Black's Law Dictionary, 5th Ed., 1979, p.1233.

Furthermore, under the grant of zoning power to counties, a county's zoning regulations "must be made in accordance with the comprehensive plan...." Section 6-7-710, as amended. Upon the creation of zoning districts, the governing authority may regulate within such districts, "...the erection, construction, reconstruction, alteration and use of buildings and structures and the uses of land in accordance with the first five-year increment of the comprehensive plan...." (emphasis added) Section 6-7-720.

Article 11 of Chapter 7, dealing with subdivisions, includes several authorized purposes for the regulation of land subdivision, one of which is "[t]o assure, in general, the wise and timely development of new areas, in harmony with the comprehensive plan..." (emphasis added) Section 6-7-1020(5). Section 6-7-1050 authorizes a planning commission to approve or disapprove subdivision plats. However, a planning commission's platting jurisdiction attaches only after adoption by the planning commission of a major street plan and after the adoption of subdivision regulations. Section 6-7-1090.

A planning commission's authority to make surveys of location and boundary lines of proposed streets, buildings, etc., and to make and certify to the governing authority a map or maps of the area surveyed, may be exercised only after the adoption of "...a comprehensive plan or at least the major street portion of such plan...." Section 6-7-1240.

In reviewing the aforementioned provisions, it appears that the adoption of a comprehensive plan (or at least the major street portion of such plan) is a prerequisite to both the promulgation of regulations pertaining to subdivisions and the approval of subdivision plats. I am enclosing a copy of an unpublished Attorney General's Opinion, dated January 6, 1978, which concluded similarly. (See, item 5 of the Opinion).

Turning to the second question, as to whether a county government must comply with its own regulations and ordinances, the governing authority would be bound by any lawfully enacted regulation or ordinance.

A resolution or ordinance passed by the county board [or county council] pursuant to the authority delegated or conferred by the legislature has the same force as a statute passed by the legislature. The acts of the board, provided they are within its authority, are binding upon it although its personnel has changed.

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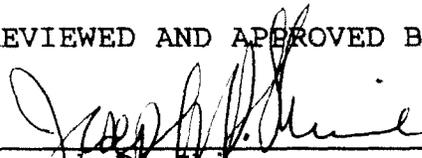
I trust the foregoing comments have adequately responded to your request. Should further clarification be needed, please advise me.

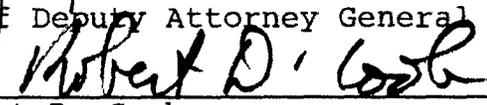
Sincerely yours,

  
Jane McCue Johnson  
Assistant Attorney General

JMJ/bl

REVIEWED AND APPROVED BY:

  
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