



Office of the Attorney General

Opinion No. 86-62

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Mr. Gary F. Wiggins
South Carolina Building Codes Council
300 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Wiggins:

Your recent letter to the Attorney General requesting an opinion of this office has been referred to me for handling and reply. Please address any future correspondence in this matter directly to me.

You have requested our opinion regarding the validity of local changes from the statewide construction standards for modular building units established pursuant to the South Carolina Modular Buildings Construction Act (Section 23-43-10 et seq., of the 1976 CODE OF LAWS OF SOUTH CAROLINA, as amended).

The South Carolina Modular Buildings Construction Act, supra, in essence, established a uniform regulatory system to govern, among other things, the construction, inspection, certification, and sale in this State of buildings manufactured off-site and transported to the point of use for installation or erection as a finished building. Section 23-43-20. Standards are to be established by the South Carolina Building Codes Council incorporating the Standard Building Code and nationally recognized codes as defined by Section 6-9-60 of the 1976 Code. A modular building certified by the Council pursuant to the Act is considered under the law to comply with the requirements of all laws, ordinances, and regulations of this State or of local governments which govern the matters within the scope of the approval and certification applicable to modular building units, including those bearing upon technologies, techniques, and materials, or the safety of buildings or building components. Section 23-43-100. That particular section continues to provide:

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...Local enforcement agencies shall issue building permits for certified modular building units, prior to installation, and issue certificates of occupancy for certified modular building units after they have been installed and inspected pursuant to this chapter; any modular building unit found not to comply with this chapter must be brought into compliance before the certificate of occupancy is issued....

The only authority granted to allow variances from the statewide standards established under the Act is vested in the Modular Buildings Board of Appeals, which authority is limited to those variances which are equivalent or which meet the intent of the Act. Section 23-43-60 and 120. The role in this State of local governmental bodies in the regulation of modular buildings is further related in pertinent part, in Section 23-43-130:

Modular building units bearing evidence of listing must be acceptable in all localities as meeting the requirements of this chapter and must be acceptable as meeting the requirements of safety to life, health, and property imposed by any ordinance of any local governments if such units are erected or installed in accordance with all conditions of the listing. Local land use and zoning requirements, fire zones, building setback requirements, site and rear yard requirements, site development requirements, property line requirements, subdivision control and on-site installation requirements, as well as the review and regulation of architectural and aesthetic requirements, are specifically and entirely reserved to local authorities. Such local requirements and rules which may be enacted by local authorities must be reasonable and uniformly applied and enforced without any distinction as to whether a building is a conventionally constructed or industrialized building. Unlabeled units constructed are subject to full inspection for local requirements and for compliance with the regulations of the

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Council. All local building officials shall enforce the provisions of this chapter and applicable regulations. In localities with no building official, the State Fire Marshal, the Building Code Council, or the South Carolina Residential Homebuilders Commission, within its authority, shall enforce.

Essentially, it appears that modular building units which have been duly certified and labeled in accordance with the requirements of the Act must be deemed acceptable anywhere in this State unless it is shown that they have not been constructed in accordance with the approved plans and specifications filed with the Division of General Services. Although the modular building itself may comply with all applicable statewide code requirements as contemplated under the Act, local authority is reserved to permit continued regulation of other traditionally local aspects, such as those related in Section 23-43-130, above.

Inasmuch as the South Carolina Modular Building Construction Act, when read as a whole, is clearly intended to establish a single, uniform regulatory system under State authority, it appears that the State has occupied the field of modular building construction regulation thereby pre-empting any local ordinances or regulations which may conflict with those statewide standards established pursuant to the Act. Any such local law or regulations that are in conflict with or inconsistent with a law of statewide application, as here, is invalid. Law et al, Spartanburg County Board v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928); State v. Solomon, 245 S.C. 550, 141 S.E. 2d 818 (1965); 56 Am. Jur. 2d, Municipal Corporations, Section 374.

Therefore, it is our opinion that the field of modular building construction regulation has been pre-empted by the State under authority of the South Carolina Modular Buildings Construction Act, and any variances or changes desired by local authorities may only be accomplished in accordance with the provisions of the Act.

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I trust the preceding discussion adequately answers your question, however, if any further explanation or assistance is required, of course, please do not hesitate to contact me.

Very truly yours,



Richard P. Wilson
Assistant Attorney General

RPW:bvc

REVIEWED AND APPROVED BY:



ROBERT D. COOK

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