

The State of South Carolina



Office of the Attorney General

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March 3, 1987

The Honorable James E. Bryan, Jr.
Senator, District No. 9
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Dear Senator Bryan:

You have advised that plans are under way for a residential group home to be built in the City of Clinton, but an apparent conflict between a statute concerning such group homes and a provision of the Standard Building Code adopted by the City has arisen. You have asked for guidance from this Office in resolving the apparent conflict.

Background

The group home is sought to be built by a rehabilitation center for the mentally retarded which is overseen by the Laurens County Mental Retardation Board. The facility will house nine or fewer residents and will be licensed by the South Carolina Department of Health and Environmental Control as an intermediate care facility. The area of the City of Clinton in which the group home is to be located is zoned R-1 Residential, which zoning classification is strictly for single-family dwellings; this Office has not examined the zoning ordinance of Clinton and accepts the fact as true for purposes of this opinion.

State Law

Section 6-7-830, Code of Laws of South Carolina (1986 Cum. Supp.), provides that state, county, and municipal

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agencies, departments, and subdivisions are subject to zoning ordinances generally. However, an exception is contained therein for certain homes for the mentally handicapped; the relevant portion of Section 6-7-830 states:

The provisions of this [zoning] act do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for such purpose. Any such home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage.

As noted above, the home will house nine or fewer mentally handicapped residents, who will receive twenty-four hour care; additionally, the home will be licensed by a state agency.

Giving the words of the statute their plain and ordinary meanings, as must be done absent ambiguity, Home Building & Loan Assn. v. City of Spartanburg, 185 S. C. 313, 194 S.E. 139 (1938), the group home under consideration appears to meet the requirements of Section 6-7-830 so as to be exempt from the provisions of the zoning ordinance of the City of Clinton. See Op. Atty. Gen. dated May 3, 1984. Thus, the group home could be built or established within an area zoned R-1 Residential, ordinarily restricted to single-family dwellings, by express exception of Section 6-7-830.

Building Code

Acting pursuant to Sections 6-9-10 and 6-9-60 of the Code, the City of Clinton has adopted, by reference, the Standard Building Code as promulgated by the Southern Building Code Council, Inc. Section 409.1.1.1, concerning institutional occupancy of buildings, contains the following:

Group I unrestrained occupancy is use of a building, structure or any

portion thereof for the purpose of providing medical care and sleeping facilities for four or more persons who are mostly incapable of self-preservation because of physical or mental disability, and shall include among others:

Hospitals
Nursing Homes
Mental Institutions (restrained and unrestrained)
Nursery Facilities - providing full time 24 hour care for persons under six years of age.

The provisions which follow cover sprinkler options, exits, doorways, smoke partitions, corridor doors and partitions, smoke detectors, protection from hazardous areas, and so forth.

Because the Standard Building Code considers a facility such as the one sought to be built or established in Clinton to be an institution, it has been suggested that such a use could not be had under the R-1 Residential classification, which use would apparently be permitted under Section 6-7-830. Thus, the conflict must be resolved.

Resolution of Conflicting Provisions

In construing statutes and ordinances, the primary objective is to ascertain and give effect to the legislative body's intent, if any all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). When two statutes or acts appear to conflict, courts will endeavor to construe them to give effect to both if possible. Purdy v. Strother, 184 S.C. 210, 192 S. E. 159 (1937). In this case, it is possible to give effect to both, since zoning ordinances and building codes actually regulate different aspects of a given situation within a political subdivision.

According to McQuillin's treatise Municipal Corporations, §25.07,

"Zoning" has been defined as the legislative division of a community into

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areas in which are permitted only certain designated uses of land or structures.

The term, ordinarily used with the connotation of comprehensive or general zoning, infers governmental regulation of the uses of land and buildings according to districts or defined areas. This regulation must and does utilize classification of uses within districts as well as classification of districts

On the other hand, building codes are adopted to regulate such things as erection, removal, repair, etc. of buildings; materials used in buildings; building operations; components or equipment used in buildings; size and height; and so forth. Thus, while there may be some slight overlap of zoning and building regulations, each is intended to regulate a different aspect of a particular building within a political subdivision.

McQuillin, in his treatise, supra, has distinguished between zoning ordinances and building codes. In §24.504, it is stated that

building regulations and zoning measures usually are distinct bodies of law, although both relate generally to buildings. Statutory authority to regulate buildings is not repealed by statutes authorizing zoning. . . .

To reconcile the building code with Section 6-7-830, it is the opinion of this Office that Section 6-7-830 would prevail as to override the R-1 Residential zoning classification, to permit the group home to be built within any zoning classification. However, once the location is decided upon, the group home is then subject to institutional standards contained within the Standard Building Code as to structural requirements.

In checking with the South Carolina Department of Mental Retardation, we learned that the interpretation given above is in actuality the practice which is followed in building or establishing group homes. For a home to be located within a residential area, for example, the facade of the facility conforms to other structures located nearby. The inside of the structure does conform to the

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local building code requirements as to doors, hallways,
smoke detectors, and so forth.

We trust that the foregoing has satisfactorily
responded to your inquiry. If you need clarification or
additional assistance, please advise. We have not attempted
to interpret applicable statutes or regulations involving
the Department of Health and Environmental Control herein
and express no opinion as to how such would interplay with
zoning and building code provisions.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:lm

REVIEWED AND APPROVED BY:

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