

1979 WL 43444 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
July 2, 1979

*1 Joseph R. Surface, Esquire
City Attorney
City of North Charleston
Post Office Box 5817
North Charleston, South Carolina 29406

Dear Mr. Surface:

In a letter to this office you inquired as to whether a recent decision by the South Carolina Supreme Court may be determined to be applicable to general contractors and residential home builders. In the case of Cullum Mechanical Construction, Inc., et al. v. The City of Charleston, et al., Opinion No. 20912, filed March 13, 1979, the South Carolina Supreme Court held that an individual licensed by the State of South Carolina to engage in mechanical contracting pursuant to Section 40-11-13 et seq. of the 1976 Code of Laws is not required to qualify as a mechanical contractor under local and city licensing requirements.

Pursuant to [Section 40-11-10 of the 1976 Code](#) of Laws, a mechanical contractor is
' . . . one who for a fixed price, commission, fee or wage undertakes or offers to undertake any plumbing, heating, air conditioning or electrical work when the cost of the undertaking is ten thousand dollars or more.' (The Court failed to cite the statute as amended which includes lightning protection work within the definition.)

The City had contended that an individual licensed as a mechanical contractor was also required to qualify under local and city requirements established pursuant to Sections 40-49-10 et seq. and 40-49-210 et seq. of the 1976 Code of Laws inasmuch as those sections were designed to preserve 'local control' over those individuals who engaged in the plumbing business in the municipalities and counties of the State.

The Court in its opinion stated that the statutes regulating mechanical contractors
' . . . contemplate an examination by the State Board to determine the qualifications of each applicant and, if the result of the examination of any applicant is satisfactory to the State Board, the State Board is required to issue to the applicant a license to engage in the business of a mechanical contractor 'in the State.' (Emphasis added).

The Court further stated that
'[Section 40-11-10 et seq.](#) plainly requires licensing by the State of mechanical contractors who engage in contracts involving sums of ten thousand dollars or more. There are no statutory exceptions to its statewide application and one so licensed can engage in the authorized business anywhere 'in the State.' This leaves municipalities and counties with the authority, under Sections 40-49-10 et seq. and 40-49-210 et seq., to examine and license plumbers who engage solely in the performance of contracts involving sums less than ten thousand dollars.'

As to your specific question of whether the Cullum decision applies to general contractors as defined by [Section 40-11-10, supra.](#), and residential home builders as defined by [Section 40-59-10 of the 1976 Code](#) of Laws, it is the opinion of this office that the decision may be construed to indicate that those individuals properly licensed as general contractors and

residential home builders by the State of South Carolina may engage in their authorized work anywhere in this State without being further licensed by a municipality or county as to their qualifications to do the work permitted by their state licenses.

*2 Pursuant to [Section 40-11-10 of the 1976 Code](#) of Laws, a general contractor is defined as ‘. . . one who for a fixed price, commission, fee or wage undertakes or offers to undertake the construction or superintending of construction of any building, highway, sewer, grading, improvement, reimprovement, structure, or part thereof, when the cost of the undertaking is thirty thousand dollars or more. Anyone who engages or offer to engage in such undertaking in this State shall be deemed to have engaged in the business of general contracting in this State.’

If the result of the examination given an individual desiring to be licensed as a general contractor is satisfactory, he is issued a license to engage in business as a general contractor ‘in the State.’ (See [Sections 40-11-130 and 40-11-140 of the 1976 Code](#) of Laws.) By [Section 40-59-10 of the 1976 Code](#) of Laws, a residential home builder is defined as ‘. . . one who constructs a residential building or structure for sale or who, for a fixed price, commission, fee or wage, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not over three floors in height and which does not have more than sixteen units in the apartment complex, or the repair, improvement or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars. Nothing herein shall prevent any person, or his agents, from performing these acts on his own residence or on his other real estate holdings. Anyone who engages or offers to engage in such undertaking in this State shall be deemed to have engaged in the business of residential home building.’

Pursuant to [Section 40-59-80 of the 1976 Code](#) of Laws, ‘if as a result of the examination, the Commission finds that the applicant is qualified to engage in residential home building in South Carolina,’ he is issued a license by the Residential Home Builders Commission. However, in keeping with the Court’s decision in [Cullum](#), an individual who engages solely in work within the definition of a general contractor where the cost is less than thirty thousand dollars, and thus is not required to be licensed by the State, may be required to be licensed by a county or municipality as to his qualifications. However, as you will note, there is no dollar limitation as to residential home builders.

The [Cullum](#) decision is consistent with an earlier opinion of this office, 1972 Ops. Atty. Gen. No. 3355, p. 197 which held that an individual licensed by the South Carolina Licensing Board for Contractors as a general or mechanical contractor is not required to successfully pass a municipal ‘qualification’ exam prior to engaging in contracting within the limits of the municipality. The opinion quoted the following from [McQuillin on Municipal Corporations](#), Volume 6, Section 21.34:

‘A general statute relating to matters of statewide concern ordinarily repeals, and is construed to repeal, previously existing local ordinances in conflict with it. Thus, where the legislative intent to occupy a whole legislative field is apparent from the statute, an ordinance with provisions contrary to those prescribed by the statute is invalid.’

*3 Hopefully the above is in complete response to your inquiry.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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