

1979 WL 43178 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
November 15, 1979

*1 Mr. John T. Watkins
Director
S. C. Residential Home Builders Commission
2221 Devine Street
Suite 312
Columbia, South Carolina 29205

Dear John:

In a letter to this Office you raised a question concerning the authority of county and municipal building officials as to issuing building permits to unlicensed residential home builders.

The South Carolina Residential Home Builders Commission has promulgated a resolution, R 106-11, which states: '(i)t shall be the duty of the building official, or other authority charged with the duty of issuing building or other similar permits, of any incorporated municipality or subdivision thereof to refuse to issue a permit for any undertaking which would classify the applicant therefor as a residential contractor under the provisions of this chapter unless the applicant has furnished evidence that he is either licensed as a residential home builder or general contractor as required by this chapter or exempt from the requirements thereof. It shall also be the duty of the building official or other authority charged with issuing building or other similar permits, to report to the South Carolina Residential Home Builders Commission the name and address of any person, firm, or corporation who, in his opinion, has violated this chapter by accepting or contracting to accomplish work which would classify such person as a general or mechanical contractor under the provisions of this chapter.'

As stated, by such regulation it is the responsibility of the referenced building officials to refuse to issue a building permit to unlicensed builders and to report those who violate the statutes requiring proper licensing of builders. The regulation however appears to be directed only to municipal officials and it is questionable whether in fact such regulation could be construed as to pertain directly to county officials. Regardless of such, the regulation in itself appears to be only a recommendation inasmuch as any punitive measures that could be taken against such officials who do not comply with the regulation are lacking.

A prior opinion of this Office, a copy of which is enclosed, was in response to the question of whether it is a violation of any state statute for county building officials to issue building permits to unlicensed residential home builders. The opinion referenced that a building official who issues a license to an unlicensed home builder may be in some instances in violation of the section now codified as [Section 40-59-130, Code of Laws of South Carolina, 1976](#), which provides a criminal penalty for builders who act without being properly licensed. It was also referenced that such building official possibly could be included in any action sought to enjoin a violation of the statutes regulating residential home builders. Of course, prior to taking any such action the situation in each case should be examined closely to determine if the building official would be a proper party to be made a part of any criminal or injunctive action.

*2 I am unaware of any other present state statutes concerning the responsibility of building officials as to issuing building permits to unlicensed builders. There may be however relevant county or municipal ordinances that would reference such. The only further suggestion I can provide is that attempts should be made to encourage all building

officials to make efforts to issue permits only to builders properly licensed by the Residential Home Builders Commission where the situation dictates that such builder should by [Section 40-59-10 of the 1976 Code](#) of Laws be licensed prior to undertaking construction and to report any improper activity by unlicensed builders.

If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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