

1976 S.C. Op. Atty. Gen. 346 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4487, 1976 WL 23104

Office of the Attorney General

State of South Carolina

Opinion No. 4487

October 12, 1976

*1 Mr. F. E. McEachern, Jr.

Director

Division of General Services

300 Gervais Street

Columbia, South Carolina 29201

Dear Mr. McEachern:

You have requested the opinion of this Office concerning the authority of the South Carolina Board of Barrier Free Design, the Division of General Services and the State Budget and Control Board with respect to the implementation of the Barrier Free statute (Sections 1-491, et seq., 1962 Code of Laws).

The Board was established in general to encourage and enable persons who are physically handicapped to achieve maximum personal independence, and to accomplish this, the Board is vested with the authority to establish, publish and enforce minimum standards and specifications necessary to eliminate architectural barriers to the use of government buildings, public buildings and other facilities by the aged, disabled or physically handicapped.

Section 1-494 provides for certain procedural matters, and recites:

‘The Board shall be an agency of the State Budget and Control Board under the supervision of the Division of General Services, and the Division of General Services shall provide such office space, clerical assistance and other facilities as may be required by the Board to perform its prescribed functions.’

This provision was not a part of the bill as introduced initially in the General Assembly but was added in the course of passage. Its meaning is somewhat ambiguous, as the Board is vested with complete authority throughout the entire statute, with the exception of the requirement that it be subject to ‘the supervision of the Division of General Services.’

The quoted phrase may arguably mean that its supervision is related only to the furnishing of clerical space, etc., as the statute recites, but it is my opinion that the supervisory power of the Division of General Services must be given effect and that it vests in the Division of General Services authority to assent to or disapprove actions of the Barrier Free Design Board before they can be made effective.

The basis of this conclusion is found in [Young v. Trustees of Fountain Inn Graded School](#), 64 S.C. 131, 138, where similar phraseology relating to the authority of school district trustees was considered by the Supreme Court. The holding of the Court is by way of dicta but is the only expression of the Court which has been found construing the meaning of such phrases as ‘supervise.’ In Young the board of trustees of a school district assessed each patron of the school an annual fee which the Supreme Court considered was an action not authorized by the board of trustees under its general grant of authority to ‘manage and control’ the school district. The Court went further and added that the additional power given to the board of education subjecting the school district to its ‘supervision and orders’ required that the school district, even if found to have the power which it undertook to assume, had not received assent of the county board of education to the imposition of the fee.

*2 Based upon this indication from the Supreme Court as to the proper construction to be given the word 'supervise', it is my opinion that actions of the Barrier Free Design Board, such as promulgation of minimum standards for the elimination of architectural barriers, the promulgation of rules and regulations, etc., require the approval of the Division of General Services prior to their effectiveness. While the statute denominates the Board as an agency of the State Budget and Control Board, and considering the fact that the Division of General Services is a subordinate division of the Budget and Control Board, it is my opinion that the sole authority of supervision of the Barrier Free Design Board is vested only in the Division of General Services, as the statute specifically prescribes.

The question presented is difficult and the correct answer is uncertain and can definitively be established only by declaration of a court. I suggest that this procedure be followed.

Very truly yours,

Daniel R. McLeod
Attorney General

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