

1976 S.C. Op. Atty. Gen. 295 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4439, 1976 WL 23056

Office of the Attorney General

State of South Carolina

Opinion No. 4439

September 1, 1976

*1 The Act of the 1976 Legislature, R765, H3396, requires state, county and municipal agencies, departments and subdivisions to affirmatively comply with county and municipal zoning ordinances, but does not require the State to obtain permits or to submit to locally adopted means of enforcing those ordinances.

TO: R. E. Clark, P.E.

Director

Physical Plant

Medical University of South Carolina

80 Barre Street

Charleston, South Carolina 29401

QUESTION PRESENTED:

Does the Act of the 1976 Legislature, R765, H3396 require state, county and municipal agencies, departments, and subdivisions to obtain permits and submit to locally adopted means of enforcing those ordinances?

STATUTES CITED:

Act of the 1976 Legislature, R765, H3396; 1962 South Carolina Code § 47–1004 and §§ 14–350.16 and 14–350.25, as amended.

DISCUSSION:

Act R765, H3396, requires the State of South Carolina and all agencies, departments and subdivisions of the State to comply with the zoning ordinances of the counties and municipalities which regulate the structure and use of buildings. A distinction exists, however, between zoning ordinances which describe permissible uses and structures and regulations which provide for the enforcement of the zoning law through permits and other administrative requirements.

This distinction may be seen by comparing prior provisions of the South Carolina Code pertaining to zoning. For example, under Chapter 7.1, Article 3, Subdivision II, of the 1962 South Carolina Code, as amended, Section 14–350.16 allows the governing bodies of municipalities and counties to regulate yards as to use and buildings as to structure use, location, etc., while Section 14–350.25 of the same subdivision allows those governing bodies ‘to provide for the enforcement of any ordinance or resolution adopted pursuant to this chapter by means of the withholding of permits . . .’ The title to Section 14–350.25 is, in part, ‘Enforcement of Zoning Ordinance or Resolution,’ which indicates that a distinction exists between the zoning ordinances under Section 14–350.16 and the enforcement of those provisions under Section 14–350.25.

A further example of the distinction between zoning and enforcement of zoning may be seen in Section 47–1004 of the 1962 South Carolina Code which states that ‘the legislative body of such municipality shall provide for the manner in which such [zoning] regulations and restrictions and the boundaries of such districts shall be determined, established

and enforced . . . This section indicates that the enforcement of the zoning regulation is separate from and not inherent in the regulation.

The legislature, then, must have intended in referring to zoning ordinances in R765 to require the State and its agencies, departments and subdivisions to affirmatively comply with local zoning ordinance restrictions on the use of land and the use and structure of buildings but not to require the State and its subdivisions to obtain local approval through permits or require them to submit to the locally adopted means of enforcement.

*2 A question might arise as to how the State could be required to comply with local zoning ordinances when locally adopted means of enforcement would be of no effect. The answer lies in Section 2 of R765 which permits the local governing bodies to apply to the courts for injunctive or other relief when its ordinances are violated. Moreover, that the legislature provided this means of enforcement while not mentioning any other indicates that it wanted the courts to be the sole means of enforcement of the local zoning ordinances as they apply to the State and its subdivisions.

CONCLUSION:

The Act of the 1976 Legislature, R765, H3396, does not require state, county, and municipal agencies, departments and subdivisions to obtain prior approval or to submit to local means of enforcing county and municipal zoning ordinances such as submitting to the local authorities plans and plats. The means of enforcement is found in Section 2 of the Act.

A. Camden Lewis
Assistant Attorney General

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