

1976 WL 30576 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
October 27, 1976

*1 Mr. John T. Watkins
Director
South Carolina Residential Home Builders Commission
1801 Charleston Highway
Cayce, South Carolina 29033

Dear Mr. Watkins:

You have requested that this Office advise you whether or not it would violate State law for County building officials to issue a building permit to a residential home builder not licensed by your Board. Act No. 897 of 1974, Statutes at Large of South Carolina, which establishes the Residential Home Builders Commission, does not specifically speak to that issue. However, § 13 of the Act does provide in part that 'Any residential builder who undertakes or attempts to undertake the business of residential home building without first having procured a valid license . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than \$100.00 or imprisoned for not less than thirty days.'

That same section also provides that

Whenever it shall appear to the Commission that any residential home builder has or is about to violate the provisions of this Act, the Commission may in its own name petition the Court of Common Pleas of the county wherein the violation occurred or is about to occur to issue a temporary restraining order enjoining such violation of this Act pending a full hearing to determine whether or not the injunction should be made permanent.

Any building official who issued a permit to an unlicensed home builder could be construed as assisting the builder in the violation of State law. As such, it may be necessary, particularly under the later provision of law cited above, to include the subdivision or building official in the temporary restraining Order enjoining the violation of the Act.

§ 56-425.1, Code of Laws of South Carolina, 1962, as amended, the enabling Act of the State Licensing Board for Contractors, provides that it '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' unless the Applicant furnishes evidence that he is either licensed or exempt from licensing. While this is not required by the Home Builders Act, I would suggest that would be an appropriate procedure for handling these matters. If I can be of any further assistance to you please let me know.

Very truly yours,

Stephen T. Savitz
Assistant Attorney General

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