

1976 WL 30894 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 13, 1976

*1 The Residential Home Builders Commission may promulgate a regulation requiring building officials in the various municipalities and counties to report non-licensed applicants for building permits to the Commission.

John T. Watkins
Director
S. C. Residential Home Builders Commission

QUESTION PRESENTED

Whether the Residential Home Builders Commission can promulgate a regulation requiring municipal and county building officials to report to the Commission non-licensed residential home builders who apply for building permits.

CITATION OF AUTHORITY

Section 56-1545.51, et seq., Code of Laws of South Carolina (1962) as amended—‘The Residential Home Builders Act’

[S.C. Highway Department v. Harbin](#), 226 S.C. 585, 86 S.E.2d 466 (1965)

[State v. Watkins](#), 259 S.C. 185, 191 S.E.2d 135 (1972)

[Banks v. Batesburg Hauling](#), 24 S.E.2d 496, 203 S.C. 273

[Piedmont v. Northern Railway Company](#), 24 S.E.2d 353, 202 S.C. 207

[Lake v. Mercer](#), 58 S.E.2d 336, 216 S.C. 391

[Sutherland on Statutory Construction](#), Volume IA, Section 31.02, pages 354-355

DISCUSSION OF ISSUES

Section 56-1545.42, Code of Laws of South Carolina (1962), as amended, gives the Commission the authority to ‘promulgate such reasonable rules and regulations as may be necessary to effectuate the provisions of this chapter.’ In Code Section 56-1545.43, the penalty section of the statute, the following wording appears:

Whenever it shall appear to the Commission that any residential home builder has or is about to violate the provisions of this chapter 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 chapter pending a full hearing to determine whether or not the injunction should be made permanent. (Emphasis added.)

The answer to our overall question hinges on two inquiries: (1) does the statute give the commission the power to promulgate the desired rule and (2) is such power violative of the delegation doctrine.

(1) It is clear that Code Section 56-1545.42 gives the Commission authority to promulgate a reasonable rule to effectuate its functioning. One of its functions is to prevent violations of the statute. It cannot prevent violations of the statute unless it knows they are occurring. Therefore, to require public building authorities to report potential violators seems well within the Commission's authority.

(2) The following language appeared in [S. C. State Highway Department v. Harbin](#), 226 S.C. 585, 594 (1955) and was quoted verbatim (citations ommitted) in [State v. Watkins](#), 259 S.C. 202 (1972):

The question of delegation of legislative power has confronted the courts with many perplexing problems, particularly during recent years when the complexities of government have been constantly on the increase. It is well settled that while the legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board 'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. [Davis v. Query](#), 209 S.C. 41, 39 S.E.2d 117; [State v. Taylor](#), 223 S.C. 526, 77 S.E.2d 195, and cases therein cited. 'However, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration.' [State v. Stoddard](#), 126 Conn. 623, 13 A. 2d 586, 588.

*2 It is settled law in this State that administrative agencies, when authorized, must only implement the statutory law of this State and may not materially add to or alter the law. [Banks v. Batesburg Hauling](#), 24 S.E.2d 496, 203 S.C. 273; [Piedmont v. Northern Railway Company](#), 24 S.E.2d 353, 202 S.C. 207. [Sutherland on Statutory Construction](#), Volume 1A, Section 21.02, pages 354-355; [Lake v. Mercer](#), 58 S.E.2d 336, 216 S.C. 391. I believe the proposed Regulation would merely implement the statute and not materially add to it.

CONCLUSION

The Residential Home Builders Commission may promulgate a regulation requiring building officials in the various municipalities and counties to report non-licensed applicants for building permits to the Commission.

Stephen T. Savitz
Assistant Attorney General

1976 WL 30894 (S.C.A.G.)