**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
**425 Fifth Avenue North**
**NASHVILLE, TENNESSEE 37243-0497**

January 24, 2000

Opinion No. 00-013

Building and Fire Codes for County Educational Facilities

## QUESTIONS

1. Does Tenn. Code Ann. § 68-120-101(b)(2) exempt county educational occupancies from local building and fire codes?

2. Even if county educational occupancies are excluded from local building and fire codes, do municipal fire prevention and building officials, pursuant to Tenn. Code Ann. § 68-120-106, have jurisdiction to review plans and take enforcement action with respect to minimum state wide building construction safety standards promulgated by the state fire marshal's office?

3. Assuming that local fire prevention and building officials have such review and enforcement authority does Tenn. Code Ann. § 68-120-116 provide the mechanisms for dispute resolution concerning county educational buildings?

## OPINIONS

1. No. Tenn. Code Ann. § 68-120-101 establishes minimum state-wide building construction safety standards. However if local municipalities standards are more stringent the CEO need only comply with the state standards.

2. Yes. Enforcement of Tenn. Code Ann. § 68-120-101 is the responsibility of those individuals referred to in Tenn. Code Ann. § 68-120-106 *concurrently*.

3. Yes. Tenn. Code Ann. § 68-120-116 provides for a ruling on issues between a city and a county seeking to enforce building regulations promulgated pursuant to chapter 120. The ruling is intended to provide finality on the issue presented.

## ANALYSIS

Your request for an opinion involves analysis of Tenn. Code Ann. § 68-120-101(b)(2), which speaks to the application of conflicting standards for building regulations, analysis of Tenn. Code Ann. § 68-120-106 (b) pertaining to enforcement of State and local standards, and Tenn. Code Ann. § 68-120-116, which provides for a ruling on issues which arise between a municipality and the county.

Chapter 120 and the regulations pertaining to the standards referenced in Tenn. Code Ann. § 68-120-101(b) establish a minimum standard (the standard building code and the standard fire prevention code or the fire prevention code) applicable to all educational occupancies including those located within the jurisdiction of a local government. To the extent any local regulation is in conflict with the provisions of chapter 120, those enforcement officials referenced in Tenn. Code Ann. § 68-120-106(a) may not enforce the local regulations. In addition, Section 68-120-106(a) states "the provisions hereof shall supersede all less stringent provisions of municipal ordinances."

## I.

## THE STANDARDS

Tenn. Code Ann. § 68-120-101(b)(2) sets minimum standards applicable to all schools, including county schools which are located in the jurisdiction of a local government. The pertinent portions read:

> 68-120-101 **State-wide building construction safety standards - Promulgation Applicability**.
>
> (a) The State Fire Marshal shall, in accordance with the Uniform Administrative Procedures Act, compiled in Title IV, Chapter 5, promulgate rules establishing minimum state-wide building construction safety standards. Such standards shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures. The standards:
>
> (1) shall include, but not be limited to, provisions relative to structural strength and stability; means of egress; fire resistant ratings and requirements; and fire protection equipment and materials;
>
> (2) may be selected wholly or partially from publications of nationally recognized agencies or organizations, such as the Southern Building Code, Congress International, Inc., The National Fire Protection Association, and Underwriters Laboratories, Inc.;
>
> (3) shall classify buildings according to types of occupancy and construction;
>
> (4) shall attain appropriate requirements and specifications for both new and existing buildings;

> (5) shall not discriminate against or in favor of particular construction materials or techniques;
>
> (6) shall to the extent practicable, be stated in terms of performance objectives without prescribing the use of certain methods, designs, techniques or materials; and
>
> (7) shall be reasonably compatible with building construction safety standards adopted by local governments in this state.
>
> (b)(1) The standards established pursuant to subsection (a) apply to municipal, county, state and private buildings unless otherwise provided by statute.
>
> (2) However, such standards do not apply to any building, ***other than state buildings or educational occupancies***, located within the jurisdiction of a local government which certified in writing to the state fire marshal that: (A) it has adopted a building construction safety code consisting of the standard building code (published by the *Southern Building Code Congress International, Inc.)*, in either: (a) the standard fire prevention code (published by the *Southern Building Code Congress International, Inc.*) or (ii) the fire prevention code (published by the *National Fire Protection Association, Inc.*) and (B) it is adequately enforcing its code and is performing any reviews of construction plan and specifications required by the state fire marshal under subsection (d). (Emphasis added).

Those minimum standards as set out in Tenn. Comp. R. & Regs., Chapter 0780-2-2-.01 (1) are as follows:

> (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards of fire prevention, fire protection and building construction safety in the State of Tennessee shall be those prescribed in the following publications:
>
> (a) *Standard Building Code*, 1997 edition, published by Southern Building Code Congress International Inc., 400 Montclair Road, Birmingham, AL 35215.

> (b) *Fire Prevention Code*, (NFPA No. 1-1997), including each reference in NFPA 1, Chapter 43, thereof, published by the National Fire Prevention Association, Inc., Batterymarch Park, Quincy, MA 02269. Each reference in the NFPA 1, Chapter 43 to an NFPA code or standard shall be deemed to be the edition thereof printed in the *National Fire Codes*, 1997 edition.

The Statute is clear that local municipalities cannot enact codes which are less stringent than the standards set forth in these two publications.

> No regulation shall be issued or enforced by any such individual which is in conflict with the provisions of this chapter. The provisions hereof shall supersede all less stringent provisions of municipal ordinances. . . .

Tenn. Code Ann. § 68-120-106(a). The statute is silent on the issuance and enforcement of local regulations which call for ***more*** stringent standards regarding building construction safety which are not in conflict with Chapter 120. By negative implication, however, a reasonable interpretation of the statute would excuse county educational occupancies from adherence to any standards other than the state minimum standards.

> . . .such standards [minimum state-wide building construction safety standards] do not apply to any building, ***other than state buildings or educational occupancies***, located within the jurisdiction of the local government. . . .

Tenn. Code Ann. § 68-120-106(b)(2). (Emphasis added). *See also* Op. Tenn. Atty. Gen. 99-148 (July 30, 1999) (copy attached) wherein this office was asked whether the University of Memphis was required to satisfy city and county building and fire protection codes in the construction or improvement of campus buildings. In responding, this office noted that, as a state entity, the University was only required to meet the state standards established by the State Fire Marshall. We went on to say:

> This statutory scheme is consistent with the 1958 decision of the Tennessee Supreme Court in *Davidson County v. Harmon* that State buildings are not subject to the zoning ordinances or building codes of a city or county. That decision was an extension of the well-established principle that the state and its agencies are not bound by statute unless the contrary intention is explicitly stated or necessarily implied by the terms of the statute. (footnotes omitted).

II.

ENFORCEMENT

You have requested an opinion as to whether municipal fire prevention and building officials have jurisdiction to review plans and take enforcement action with respect to minimum state wide building construction safety standards promulgated by the State Fire Marshal's office. Pursuant to Tenn. Code Ann. § 68-120-106[1] municipal fire prevention and building officials specifically have ***concurrent*** jurisdiction to enforce regulations which are not in conflict with Ch. 120. *See also* Op. Tenn. Atty. Gen. 79-413 (September 17, 1979). The statute appears to recognize that the authority for review and enforcement does not derive solely from the Fire Marshal's designation of "assistants" but that local authorities, in addition to enforcing the standards contained in the building code and the fire prevention code, have the authority to enforce those local standards which are not in conflict with the State standards.

> The State Fire Marshal's deputies and ***assistants***, including all municipal fire prevention or building officials . . . shall have ***concurrent*** jurisdiction. No regulation shall be issued or enforced by any such official which is in conflict with the provisions of this chapter. The provisions hereof shall supersede all less stringent provisions of municipal ordinances. (Emphasis added).

Tenn. Code Ann. § 68-120-106(a). Again, the statute does not speak to enforcement of ***all standards*** but only to those state standards required by Tenn. Code Ann. § 68-120-101(b)(2).

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[1]The pertinent portion of the statute is as follows:

68-120-106 **Enforcement Officials - Jurisdiction - Employment of Technicians**

(a) The State Fire Marshal, such fire marshal's deputies and ***assistants***, including all municipal fire prevention or building officials in their municipalities having such officers, and where no such officer exists, the chief of the fire department of every incorporated city or place in which a fire department is established, and the mayor of each incorporated place in which no fire department exists, and all state officials (now having jurisdiction or as directed by the governor) or county offices having jurisdiction in regard to any matter herein regulated, shall have concurrent jurisdiction. No regulation shall be issued or enforced by any such official which is in conflict with the provisions of this chapter. The provisions hereof shall supersede all less stringent provisions of municipal ordinances. The State Fire Marshal is authorized to employ such technicians as the State Fire Marshal may deem necessary for the proper enforcement of this chapter (which technicians may be licensed engineers or architects), subject to the approval of the governor; provided, that the employment of such assistance shall be limited to funds appropriated to the division of fire prevention and available for such purpose. (Emphasis added).

III.

DISPUTE RESOLUTION

Finally, you have requested an opinion as to whether Tenn. Code Ann. § 68-120-116 provides the mechanism for dispute resolution concerning county educational buildings. Tenn. Code Ann. § 68-120-116 became effective on April 23, 1998, and must be read consistent with the intent of the legislature in enacting the general provisions for building regulations. *See Carver v. Citizens Utility Company*, 954 S.W.2d 34 (Tenn. 1997)(statutes relating to same subject or sharing common purpose shall be construed together in order to advance their common purpose or intent). As previously discussed, the intent of the Legislature in passing Tenn. Code Ann. § 68-120-101, *et. seq*. was to provide for minimum state-wide building construction safety standards.

A reasonable interpretation of the statute when read in light of the legislative intent of establishing state-wide minimum standards recognizes the role of the fire marshal in the dispute resolution process. The statute, however, limits the Fire Marshal's role to issuing a ruling on the building or fire code issue presented.

> Notwithstanding the provision of § 68-120-101, or any other law to the contrary, the state fire marshal's office may be utilized to hear an appeal and issue a ruling, regarding a building or fire code issue which involves a county building within a city, when a conflict arises between the city and county. The state fire marshal's office ***must provide a decision within ten (10) working days of receipt of the written appeal.***

Tenn. Code Ann. § 68-120-116. The lack of any provisions permitting an appeal for the SFMO ruling such as those found under the Administrative Procedures Act (*see* Tenn. Code Ann. §§ 4-5-101, *et seq*.) suggest that the legislature intended this ruling to be final.

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