



STATE OF KANSAS

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April 28, 1981

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ATTORNEY GENERAL OPINION NO. 81-103

Edward C. Redmon
State Fire Marshal
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Topeka, Kansas 66612

Re: Fire Protection -- Fire Safety and Prevention --
Compliance with Certain Building Codes in lieu of
Fire Prevention Code

Synopsis: K.S.A. 1980 Supp. 31-134a provides an exception to the Kansas Fire Prevention Code (KFPC) for buildings which conform to any one of three specified nationally recognized building codes and meet certain other requirements. As the intent of the legislature was to provide alternatives to the KFPC which still provide adequate fire protection, adoption of the three codes which are enumerated entails adoption of their various subparts as well. Additionally, as such codes may not be retroactively enforced, only new buildings are affected, with existing structures coming under the uniform application of the KFPC. Cited herein: K.S.A. 1980 Supp. 31-132, 31-133, 31-134, 31-134a, K.A.R. 1980 Supp. 22-3-1.

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Dear Mr. Redmon:

As Fire Marshal for the State of Kansas, you have requested this office to construe certain provisions of a bill which was enacted into law by the 1980 Legislature. The measure, Senate Bill No. 518 (L. 1980, ch. 120), amends two statutes, K.S.A. 1980 Supp. 31-132 and 31-134, and adds a new statute, K.S.A. 1980 Supp. 31-134a. You wish to know what effect these changes, especially those reflected in the new statute,

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have on your office's authority to enforce the rules and regulations it has promulgated and which collectively make up the Kansas Fire Prevention Code (KFPC) [K.S.A. 1980 Supp. 31-134(b)].

Specifically, you first inquire as to the scope of K.S.A. 1980 Supp. 31-134a(a), which states:

"(a) A building shall be deemed to comply with the Kansas fire prevention code if the building conforms to one of the following building codes, has been issued a certificate of occupancy and conforms to any special requirements of the Kansas fire prevention code which are not covered by such building code:

"(1) The 1976 or 1979 edition of the uniform building code;

"(2) the 1975 or 1978 edition of the basic building code (B.O.C.A.);

"(3) the 1976 or 1979 edition of the standard building code (also known as the southern standard building code)." (Emphasis added.)

As can be seen from the wording of the statute, the Legislature has effectively provided local governments an alternative to the KFPC, for if the provisions of one of the enumerated codes are met, together with the other requirements, a building is exempt from the former. Your inquiry concerns what specifically is meant by the phrase underscored above, i.e. "uniform building code."

We would note at the outset that there exists no one single volume bearing the title "Uniform Building Code," but rather three volumes which, when taken together with the National Electric Code, are considered in the building trade as constituting the code. These three volumes, the Uniform Mechanical Code, the Uniform Plumbing Code, and the Uniform Fire Code, must, in our opinion, be considered together in determining what the legislature intended local governments be able to enforce in lieu of the KFPC. We would base this conclusion on the following.

First, it is apparent that the provisions of the KFPC which concern buildings are taken from the Life Safety Code, which is incorporated by reference at K.A.R. 1980 Supp. 22-3-1. Factors such as exits, sprinklers and occupant load are covered,

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together with structural and building service equipment requirements and restrictions on the types of materials and finishes which may be used. In order to find sections dealing with all of these various areas in the Uniform Building Code, however, two sub-parts (the Uniform Mechanical Code and the Uniform Fire Code) must be consulted. As the former is concerned with service equipment and materials and the latter deals with exits, fire alarms, etc., neither is sufficient by itself to address the material included in the Life Safety Code.

Second, in construing a statute the basic rule of construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that purpose can be ascertained from the statute. City of Salina v. Jagers, 228 Kan. 155 (1980). Additionally, it is to be presumed that the legislature had and acted with full knowledge as to the subject matter of the statute and as to existing law and legislation on that same subject. Rogers v. Shanahan, 221 Kan. 221 (1976). Therefore, it must be presumed that, in allowing buildings to comply with other codes besides the KFPC, the legislature specified those portions of the codes which would be adequate substitutes. This has the effect of requiring the phrase "Uniform Building Code" to include both the mechanical and fire subparts, with the same being true, in our opinion, for any of the other codes listed in K.S.A. 1980 Supp. 31-134a which may consist of multiple volumes.

Your next inquiry deals with the scope of 1980 Senate Bill No. 518 -- does it apply to new buildings only, or to all structures? If the latter, you also wish to know whether, by adopting the Uniform Building Code (and thereby its Uniform Fire Code sub-part), a city may effectively remove itself from the otherwise uniform application of the KFPC?

In examining the language of 1980 Senate Bill No. 518, no clear indication exists that the measure applies only to new buildings. For example, section 2 (now K.S.A. 1980 Supp. 31-134a) states merely that "[a] building shall be deemed to comply with the Kansas Fire prevention code if" However, there exists in Kansas the well-established rule of law that statutes will be construed as operating prospectively rather than retrospectively, unless language showing a contrary intent is clearly provided. Eakes v. Hoffman - LaRoche, Inc., 220 Kan. 565 (1976), Bartlett v. Heersche, 209 Kan. 369 (1972). Furthermore, retroactive application will not be given when "vested rights" will be impaired, or where liabilities will be imposed which did not exist prior to the time of the statute's passage. Eakes, supra; Nitchals v. Williams, 225 Kan. 285 (1979).

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The application of a statute imposing new building code requirements to an existing structure would clearly affect vested rights. 6 McQuillin, Municipal Corporations §20.71, 3rd rev. ed. (1980). The legislature has recognized as much in this context, for the KFPC is limited in its application to "facilities" in service subsequent to the date of its enactment, and only if a distinct hazard to life or property exists may existing structures be made to comply. K.S.A. 1980 Supp. 31-133(c). Accordingly, in our opinion the application of 1980 Senate Bill No. 518, including what is now K.S.A. 1980 Supp. 31-134a, can only be to those structures erected after the effective date of the statute (July 1, 1980).

This conclusion has the effect of answering your remaining question, for if K.S.A. 1980 Supp. 31-134a may be applied only to such buildings, structures erected before then remain under the KFPC, which, having been adopted as a regulation by your office, by statute is made of uniform force and effect throughout the state [K.S.A. 1980 Supp. 31-134(b)]. This uniformity serves to preclude the use of a city's home rule power. See, e.g., City of Junction City v. Griffin, 227 Kan. 332 (1980). Of course, as noted above, the KFPC itself can be strictly applied only to structures built after its adoption (January 1, 1973), with older buildings subject to its provisions only in the event a life or property hazard is determined to exist.

However, we do note that a mechanism does exist whereby municipal ordinances which differ from the KFPC can be brought before the Fire Marshal for a determination of whether they are necessarily "inconsistent." The use of such a term would not seem to preclude the local adoption of other national codes which, though different from the KFPC, could be determined by your office to be consistent with the latter in the protection they afford. Apart from this exception, we see no authorization in the statutes for a municipality to adopt its own fire protection and/or prevention code. K.S.A. 1980 Supp. 31-134a, as noted, does provide a limited grant of authority to so act, but only in the case of new construction, i.e. post July 1, 1980.

In conclusion, K.S.A. 1980 Supp. 31-134a provides an exception to the Kansas Fire Prevention Code (KFPC) for new buildings which conform to any one of three specified nationally recognized building codes and meet certain other requirements. As the intent of the legislature was to provide alternatives to the KFPC which still provide adequate fire protection, adoption of the three codes which are enumerated entails adoption of their various subparts as well. Additionally,

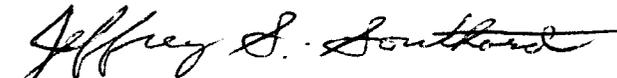
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as such codes may not be retroactively enforced, only new buildings are affected, with existing structures coming under the uniform application of the KFPC.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle