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October 9, 2012

ATTORNEY GENERAL OPINION NO. 2012-23

The Honorable Tom Arpke
State Representative, 69th District
512 W. Iron Ave.
Salina, KS 67401

Re: Fire Protection—Fire Safety and Prevention—Fire Marshal; Power and Duties; Rules and Regulations

Fire Protection—Fire Safety and Prevention—Compliance with Certain Building Codes Deemed Compliance with Fire Prevention Code

Synopsis: The adoption of the 2006 edition of the International Building Code in K.A.R. 22-1-3(a) does not conflict with K.S.A. 31-134a. Cited herein: K.S.A. 31-133, 31-134; 31-134a; K.A.R. 22-1-3.

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Dear Representative Arpke:

As State Representative for the 69th District, you ask for our opinion on whether K.A.R. 22-1-3(a), a regulation adopted by the State Fire Marshal that incorporates by reference the 2006 edition of the International Building Code (IBC), conflicts with K.S.A. 31-134a.

K.A.R. 22-1-3(a) was adopted pursuant to K.S.A. 31-133, which provides that the State Fire Marshal shall promulgate rules and regulations “for the safeguarding of life and property from fire, explosion and hazardous materials.” In doing so, the State Fire Marshall “may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes.”¹ These rules and regulations constitute the Kansas fire prevention code.²

¹ K.S.A. 31-133(b).

² See K.S.A. 31-134(b).

Although K.A.R. 22-1-3(a) is authorized under K.S.A. 31-133, you believe it may conflict with a different statutory provision, K.S.A. 31-134a(a)(4), 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:

. . . .

(4) the 2000 edition of the international building code.

You note that this statute refers to the 2000 edition of the IBC and not the 2006 edition adopted by K.A.R. 22-1-3(a).

Even so, we see no conflict between K.S.A. 31-134a(a)(4) and K.A.R. 22-1-3(a). That is because subsection (b) of K.S.A. 31-134a explicitly authorizes the State Fire Marshal to “adopt rules and regulations specifying those subsequent editions of the codes enumerated in subsection (a) . . . which the state fire marshal has determined provide protection equivalent to that of the Kansas fire prevention code.” In other words, the State Fire Marshal may specify a later edition of the IBC than the 2000 edition cited in the statute.

In conclusion, we opine that the adoption of the 2006 edition of the IBC in K.A.R. 22-1-3(a) is authorized by K.S.A. 31-133 and is consistent with K.S.A. 31-134a.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General