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OPINION NO. 78 008

Mr. Frank W. King  
Chairman  
Board of Building Standards  
2323 West Fifth Avenue  
P.O. Box 825  
Columbus, Ohio 43216

Dear Mr. King:

I have before me your request for my opinion on several matters concerning the authority of county building departments, certified by the Ohio Board of Building Standards, in their adoption of rules and regulations that conflict with those of the Ohio Building Code (OBC). Your questions may be summarized as follows:

1. Does a county board of building standards, which is certified by the Ohio Board of Building Standards, have the authority to grant any variance or make any judgment below the minimum standards prescribed in the Ohio Building Code?
2. When a county board of building standards acts on behalf of a member municipality, is its authority limited to that granted to a municipality under R.C. 3781.01?

R.C. 3781.07 establishes the Ohio Board of Building Standards in the Department of Industrial Relations. The duties of the Board are set forth in R.C. 3781.07(A) as follows:

The [Ohio] board of building standards shall:

(A) Formulate and adopt rules governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in section 3781.06 of the Revised Code, including land area incidental thereto, the construction of industrialized units, the installation of equipment, and the standards or requirements for materials to be used in connection therewith . . . Such rules shall be the lawful minimum requirements specified for such buildings or industrialized units . . . (Emphasis added)

These rules comprise the Ohio Building Code, part of the Ohio Administrative Code.

R.C. 307.37 authorizes a board of county commissioners to adopt regulations concerning single, two and three family dwellings within the county's unincorporated area. This provision also authorizes such a board to create a building regulation department for the purpose of enforcing such regulations. Similarly, R.C. 3781.01 permits the legislative authority of a municipal corporation to make " . . . further regulations, not in conflict with such chapters or with the rules and regulations of the [Ohio] board of building standards." R.C. 3781.10(E) directs the Ohio Board of Building Standards to certify municipal and county building departments in order that they might exercise enforcement authority and make inspections pursuant to the enforcement provisions of R.C. 3781.03 and 3791.04.

In certain situations, a county board of building standards, certified pursuant to R.C. 3781.03(E), has within it member municipalities which have the power to make "further and additional" regulations under R.C. 3781.01. Your request describes such a situation, where the county board, representing both the county and municipalities within it, has approved a variance permitting a lesser standard for installation than that mandated by the Ohio Building Code. It is my understanding that this variance covers both the county and municipalities within it.

R.C. 3781.10(A) states that the rules adopted by the Ohio Board of Building Standards shall be the lawful minimum requirement. R.C. 3781.102(B) requires that rules established by a county board of commissioners for the licensing of certain contractors not conflict with the Ohio Building Code. No other provision in the Revised Code permits a board of county commissioners to adopt building standards below those set forth in the Ohio Building Code. Similarly, R.C. 3781.01 limits building standards set by municipalities to those consistent with the Ohio Building Code. Therefore, it is my opinion that a certified county board has no authority to adopt a regulation granting a variance below the minimum standards prescribed in the Ohio Building Code.

Your second question concerns the scope of authority of a certified county board when it acts on behalf of a member municipality. Chartered municipalities may regulate buildings pursuant to Article XVIII, §3, Ohio Constitution, which provides that:

Municipalities shall have the authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Such regulation constitutes an exercise of the police power and hence may not conflict with general laws of the state. Wilson v. Cincinnati, 46 Ohio St.2d 138 (1976).

R.C. 715.26 empowers municipalities to:

- (A) Regulate the erection of buildings or other structures and the sanitary condition thereof, the repair of, alteration in, and additions to buildings and other structures;
- (B) Provide for the inspection of buildings or other structures, and for the removal and repair of unsecure, unsafe, or structurally defective buildings or other structures . . . .

That these specifically enumerated powers do not preclude the exercise of a municipality's police power in this area is evidenced by R.C. 715.30, which provides municipal corporations with the authority to seek injunctions ". . . to prevent violations of ordinances and regulations enacted pursuant to sections 715.26 to 715.29, inclusive of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution . . ." (emphasis added). The use of the word "or" indicates that the General Assembly did not intend to restrict the police powers of a municipality by granting the powers enumerated in R.C. 715.26.

The General Assembly did, however, restrict a municipality's police power to regulate buildings by enacting R.C. 3781.01, which as discussed earlier, permits a municipal corporation to promulgate regulations regarding building standards not in conflict with standards set by the Ohio Board of Building Standards. Therefore, a charter municipality possesses authority pursuant to Article XVIII, §3, Ohio Constitution, and R.C. 715.26 to 715.29 to promulgate and enforce building regulations, limited only by the provisions of R.C. 3781.01.

R.C. 307.38, which provides for the appointment of a county building inspector, also permits a board of county commissioners to:

. . . contract with any municipal corporation in the county for the administration and enforcement of said building regulations and any municipal corporation may contract with the board for the administration and enforcement of the building regulations of such municipal corporation.

When a county board of building standards enforces municipal regulations under such an agreement, it necessarily possesses the authority granted to such municipality to enforce those regulations. There is, however, no authority for a county board to act beyond the enforcement powers granted to a municipality upon whose behalf it is acting. Therefore, it is my opinion that when a county board of building standards acts on behalf of a member municipality, its authority is limited to that granted by statute and Article XVIII, §3, Ohio Constitution to such municipality.

In specific answer to your question, it is my opinion, and you are so advised, that:

1. A certified county board of building standards has no authority to adopt a regulation granting a variance below the minimum standards prescribed in the Ohio Building Code.
2. When a certified county board of building standards acts on behalf of a member municipality, its authority is limited to that granted by statute and Article XVIII, §3, Ohio Constitution to such municipality.

Respectfully,



WILLIAM J. BROWN  
Attorney General

