



Attorney General
Betty D. Montgomery

April 17, 1997

OPINION NO. 97-023

Gerald O. Holland, Chairman
Board of Building Standards
Department of Commerce
6606 Tussing Road
P.O. Box 4009
Reynoldsburg, Ohio 43068-9009

RECEIVED
APR 18 1997
BOARD OF BUILDING
STANDARDS

Dear Chairman Holland:

You have requested an opinion regarding the status of a certified township building department when the building department of the county in which the township is located becomes certified by the Board of Building Standards pursuant to R.C. 3781.10(E) to enforce the provisions of the Ohio Basic Building Code (OBBC). The following factual circumstances, as set forth in your letter, have prompted your request.

In 1995, the building department of Liberty Township in Delaware County was certified by contract with the Village of Powell on condition that the village enforce the provisions of the OBBC within the township's geographical boundaries. *See* R.C. 3781.10(E)(1)(c); R.C. 3781.10(E)(2)(c); 9 Ohio Admin. Code 4101:2-71-57 (1994) (certification of the building department of the Village of Powell, Ohio); 9 Ohio Admin. Code 4101:2-75-71 (1996-1997 Supplement) (certification of the building department of Liberty Township, Delaware County, Ohio). Thereafter, the building department of Delaware County applied for certification to enforce the provisions of the OBBC within the unincorporated areas of the county. The Board of Building Standards granted such certification to the Delaware County building department effective October 15, 1996. *See* [1996-1997 Monthly Record] Ohio Admin. Code 4101:2-74-35 at 662. You also note that the Board of Building Standards has received inquiries from a trustee of New Russia Township in Lorain County regarding the likely status of the township's building department in the event that the Lorain County building department is certified by the Board of Building Standards to enforce the provisions of the OBBC within the county.

In your letter you have referred to R.C. 307.37(E), R.C. 505.76(B), and R.C. 505.78. R.C. 307.37(E) states, in pertinent part, that upon certification of the building department under R.C. 3781.10, the board of county commissioners "may direct the county building department

to exercise enforcement authority and to accept and approve plans pursuant to [R.C. 3781.03] and [R.C. 3791.04] *for any other kind or class of building in the unincorporated territory of the county.*" (Emphasis added.) R.C. 505.76(B) and R.C. 505.78 set forth the priorities that are to prevail among building codes or regulations adopted by a board of county commissioners and a board of township trustees. R.C. 505.76(B) thus states that in a county in which the board of county commissioners has adopted building regulations, "no township shall adopt such regulations pursuant to [R.C. 505.75-.77]." R.C. 505.78 declares, on the other hand, that if a board of township trustees adopts a standard code under R.C. 505.75-.77 and the board of county commissioners of the county in which the township is located subsequently adopts building regulations pursuant to R.C. 307.37-.40, "the code adopted by the board of township trustees shall be of no force and effect one year after the effective date of the building regulations adopted by the board of county commissioners or at an earlier date, as provided by the board of township trustees."

In your first question you have asked whether the foregoing provisions of R.C. 307.37(E), R.C. 505.76(B), and R.C. 505.78, when read together, require the Board of Building Standards to rescind its certification of the Liberty Township building department within one year of the effective date of Delaware County building department's certification to enforce the provisions of the OBBC within the unincorporated areas of the county. Your second question asks what the status of a certified township building department is when a county's building department receives certification from the Board of Building Standards to enforce the provisions of the Ohio Basic Building Code within the county.

Resolution of your questions requires that we ascertain the nature and scope of authority that R.C. 3781.10 confers upon the Board of Building Standards regarding the certification of local governmental building departments. Our next task will be to examine the specific provisions of R.C. 307.37, R.C. 505.75, R.C. 505.76, and R.C. 505.78 for the purpose of determining whether and to what extent those provisions may affect the Board's exercise of its certification authority under R.C. 3781.10.

In R.C. Chapter 3781 the General Assembly has addressed the establishment and enforcement of building standards throughout the state of Ohio. *See also* R.C. Chapters 3783 (building standards--electrical safety inspection); 3791 (building standards--offenses and penalties). In R.C. 3781.07 it has created the Board of Building Standards within the Department of Commerce as the state agency bearing primary responsibility for the formulation and enforcement of these building standards. The general duties, powers, and responsibilities of the Board of Building Standards are set forth in R.C. 3781.10. R.C. 3781.10(A) thus states, in pertinent part, that the Board of Building Standards shall "[f]ormulate and adopt rules governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in [R.C. 3781.06], 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."

R.C. 3781.06, to which R.C. 3781.10(A) makes express reference, is a definitional provision that specifies the categories of buildings to which the provisions of R.C. Chapters 3781 and 3791 are to apply. R.C. 3781.06(A) thus states the following:

Any building which may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, and all other buildings or parts and appurtenances thereof erected within this state shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy, except that sections 3781.06 to 3781.18 and 3791.04 of the Revised Code shall be considered as model provisions with no force and effect when applied to single-family, two-family, and three-family dwelling houses, and accessory structures incidental to those dwelling houses, which have not been constructed or erected as industrialized one-family, two-family, or three-family units or structures with the meaning of the term "industrialized unit" as provided in section 3781.10 of the Revised Code, except where the context specifies mandatory applicability. (Emphasis added.)

Division (B) of R.C. 3781.06 further provides that R.C. 3781.06-18 and R.C. 3791.04 shall not apply to buildings or structures that are incident to the use of land for agricultural purposes, or to existing single-family, two-family, and three-family detached dwelling houses for which applications have been submitted to the Director of Human Services pursuant to R.C. 5104.03 for purposes of operating type A family day-care homes. R.C. 3781.06(B)(1), (2). Accordingly, "R.C. 3781.06 can be characterized broadly as requiring all buildings to comply with the state building code except non-commercial agricultural structures and small residential buildings." 1993 Op. Att'y Gen. No. 93-002 at 2-18.

Pursuant to R.C. 3781.10(A)'s grant of authority, the Board of Building Standards has adopted and promulgated rules that govern the erection, construction, repair, alteration, and maintenance of buildings subject to its regulation, and these rules appear at 9 Ohio Admin. Code Chapters 4101:2-1 through 4101:2-69 as the Ohio Basic Building Code. *See* 9 Ohio Admin. Code 4101:2-1-03(A) (1996-1997 Supplement). 9 Ohio Admin. Code 4101:2-1-09 (1996-1997 Supplement) provides that the OBBC applies to all buildings except those described and enumerated in divisions (A) through (H) of that rule.¹

¹ In addition to reiterating the exceptions listed in R.C. 3781.06, 9 Ohio Admin. Code 4101:2-1-09 (1996-1997 Supplement) excepts several other categories of buildings from the application of the provisions of the Ohio Basic Building Code (OBBC). These include buildings owned by and used for a function of the United States government, existing buildings where their location, parts, equipment, and other items do not constitute a serious hazard unless otherwise regulated by the provisions of chapter 34 of the OBBC, buildings constructed in accordance with plans approved prior to the effective date of the OBBC, and buildings and

R.C. 3781.10 also grants the Board of Building Standards the authority to certify the building departments of local political subdivisions to enforce the provisions of the OBBC within their respective jurisdictions. R.C. 3781.10(E) thus provides that the Board of Building Standards shall "[c]ertify municipal, township, and county building departments to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections, pursuant to [R.C. 3781.03] and [R.C. 3791.04]."² The statute further authorizes the certification of personnel of municipal, township, and county building departments, as well as other persons, firms, or corporations, for the purpose of exercising enforcement, approval, and inspection authority pursuant to R.C. 3781.03 and R.C. 3791.04, and describes the requirements for that certification. *Id.*

R.C. 3781.10(E)(3) then provides that municipal, township, and county building departments "shall have jurisdiction within the meaning of [R.C. 3781.03] and [R.C. 3791.04], only with respect to the types of buildings and subject matters as to which they have been certified under this section and as to which such certification remains in effect." Regarding the jurisdiction of township and county building departments, R.C. 3781.03 states that all the provisions of R.C. Chapters 3781 and 3791 and any regulations adopted pursuant to those chapters relating to the construction, arrangement, and erection of buildings shall be enforced by

the building inspector or commissioner of buildings in townships whose building departments have been certified by the board of building standards under section 3781.10 of the Revised Code, and, in the unincorporated territory of counties outside the boundaries of townships that have adopted building regulations under sections 505.75 to 505.77 of the Revised Code, the building inspector or commissioner of buildings in counties whose building departments have been certified by the board of buildings standards under section 3781.10 of the Revised Code.³ (Footnote added.)

structures that are designed, constructed, and maintained in accordance with federal standards and regulations and are used primarily for federal and state military purposes. 9 Ohio Admin. Code 4101:2-1-09(B)-(D), (H).

² R.C. 3781.03 specifies, in part, those public officials that are authorized to enforce the provisions of R.C. Chapters 3781 and 3791 and any regulations adopted under those chapters. R.C. 3791.04 addresses, *inter alia*, the approval of building plans by building departments that have been certified by the Board of Building Standards pursuant to R.C. 3781.10(E).

³ The foregoing language of R.C. 3781.03 thus eliminates the possibility of inconsistent or overlapping enforcement of the provisions of the OBBC within township boundaries when a county building department becomes certified under R.C. 3781.10(E). This language means that in that situation the township building inspector or commissioner of buildings, not the county building inspector or commissioner of buildings, will exercise exclusive jurisdiction with respect

R.C. 3781.10(E)(4) further describes the process and requirements for certification of a municipal, township, or county building department by the Board of Building Standards. *See also* R.C. 3781.10(E)(6) (revocation or suspension of a building department's certification). Finally, R.C. 3781.10(E)(7) declares that

[u]pon certification, and until such authority is revoked, county and township building departments shall enforce such rules over those occupancies listed in the [certification] application without regard to limitation upon the authority of boards of county commissioners under Chapter 307. of the Revised Code or boards of township trustees under Chapter 505. of the Revised Code.

Let us now review the provisions of R.C. Chapters 307 and 505 that pertain to your inquiry. R.C. 307.37 confers upon a board of county commissioners the authority to adopt, administer, and enforce "regulations pertaining to the erection, construction, repair, alteration, redevelopment, and maintenance of single-family, two-family, and three-family dwellings within the unincorporated territory of the county." R.C. 307.37(A)(1). R.C. 307.37(B) further establishes a public hearing process that must be followed by a board of county commissioners with respect to the adoption of the foregoing regulations, and R.C. 307.37(C) provides that "[n]o person shall violate any regulation of the board." *See also* R.C. 307.40 (unlawful construction may be enjoined); R.C. 307.99(C) (whoever violates R.C. 307.37 "shall be fined not more than three hundred dollars"). However, regulations adopted by a board of county commissioners under R.C. 307.37 "do not affect buildings or structures that exist or on which construction has begun on or before the date the regulation or amendment is adopted by the board." R.C. 307.37(D).

R.C. 307.37(E) then provides for the establishment of a building department that is to be responsible for enforcing the foregoing building regulations, and further addresses the certification of that building department by the Board of Building Standards:

The board [of county commissioners] may provide for a building regulation department and may employ such personnel as it determines to be necessary for the purpose of enforcing its regulations. Upon certification of the building department under section 3781.10 of the Revised Code, the board may direct the county building department to exercise enforcement authority and to accept and approve plans pursuant to sections 3781.03 and 3791.04 of the Revised Code for any other kind or class of building in the unincorporated territory of the county.

At the level of township government, R.C. 505.75 is the provision that is analogous to R.C. 307.37. R.C. 505.75 grants a board of township trustees the authority to adopt by

to the enforcement of the provisions of the OBBC within the township.

incorporation by reference, administer, and enforce "a standard code pertaining to the erection, construction, repair, alteration, and maintenance of single-family, two-family, and three-family dwellings promulgated by the state, or any department, board, or other agency thereof, or by any municipal corporation or county in this state, within the unincorporated territory of the township." R.C. 505.75(A). R.C. 505.75(B) further establishes a public hearing process that must be followed by a board of township trustees with respect to the adoption of the foregoing regulations or any amendments thereto, and also subjects the decision of a board of township trustees with respect to such adoption to voter referendum. *See also* R.C. 505.77 (prohibitions applicable in the case of a standard code adopted under R.C. 505.75).

R.C. 505.75(C) similarly authorizes the establishment of a building department to enforce a township's building regulations, and also permits the certification of the township building department by the Board of Building Standards:

The board of township trustees may establish a building regulation department and employ personnel to enforce building regulations. Upon certification of the building department under section 3781.10 of the Revised Code, the board of trustees may direct the township building department to exercise enforcement authority and to accept and approve plans pursuant to sections 3781.03 and 3791.04 of the Revised Code for any other kind or class of building in the unincorporated territory of the township.⁴ (Footnote added.)

In R.C. 505.76(B), however, the General Assembly has qualified the power of a board of township trustees to adopt building regulations under R.C. 505.75 when a board of county commissioners has already adopted building regulations under R.C. 307.37. R.C. 505.76(B) states as follows: "In a county in which the board of county commissioners has adopted building regulations, no township shall adopt such regulations pursuant to sections 505.75 to 505.77 of the Revised Code." In R.C. 505.78 the General Assembly has further limited the application and enforcement of building regulations adopted by a board of township trustees under R.C. 505.75 when a board of county commissioners subsequently adopts building regulations under R.C. 307.37. R.C. 505.78 reads as follows:

If a board of township trustees adopts a standard code under sections 505.75 to 505.77 of the Revised Code and the board of county commissioners of the county in which the township is located subsequently adopts building regulations pursuant to sections 307.37 to 307.40 of the Revised Code, the code

⁴ R.C. 505.73 grants a board of township trustees the authority to adopt by incorporation by reference, administer, and enforce within the unincorporated area of the township "an existing structures code pertaining to the repair and continued maintenance of structures and the premises of such structures." Your request poses no questions regarding the application or enforcement of an existing structures code by a township building department.

adopted by the board of township trustees shall be of no force and effect one year after the effective date of the building regulations adopted by the board of county commissioners or at an earlier date, as provided by the board of township trustees.

Turning now to your first question, it is our opinion that the foregoing provisions of R.C. 307.37(E), R.C. 505.75, R.C. 505.76(B), and R.C. 505.78, when read together, do not impose upon the Board of Building Standards a requirement that it rescind its certification of a township building department within one year of the effective date of the Board's certification under R.C. 3781.10 of the building department of the county in which that township is located. It is apparent that R.C. 307.37(E), R.C. 505.75, R.C. 505.76(B), and R.C. 505.78 do not impose such a requirement upon the Board by their express terms. Rather, an examination of the language of these several sections discloses the absence of an explicit directive to that effect.

We also discern nothing about the limitations imposed upon a board of township trustees by R.C. 505.76(B) and R.C. 505.78 with respect to county building regulations from which one should infer on the part of the Board of Building Standards an obligation to rescind the certification previously granted to a township building department under R.C. 3781.10(E) to enforce the provisions of the Ohio Basic Building Code, once the building department of the county in which the township is located receives the same certification from the Board. The OBBC applies to all buildings except, *inter alia*, single-family, two-family, and three-family dwelling houses. Conversely, R.C. 505.76(B) and R.C. 505.78 describe the priorities that shall be observed with respect to the adoption by a board of county commissioners and a board of township trustees of building regulations applicable to the erection, construction, repair, alteration, and maintenance of single-family, two-family, and three-family dwellings within the unincorporated territory of the county and township, and the enforcement of such regulations by a county and township building department.⁵ Given this obvious difference in the categories of buildings addressed by the OBBC and building regulations adopted by a county and township pursuant to R.C. 307.37 and R.C. 505.75, the more logical conclusion is that one may not infer from R.C. 307.37(E), R.C. 505.75, R.C. 505.76(B), and R.C. 505.78 a requirement that the Board of Building Standards rescind its certification of a township building department under R.C. 3781.10 in the circumstance you have described.⁶

⁵ R.C. 505.76(B) prohibits a board of township trustees from adopting building regulations under R.C. 505.75 when the board of county commissioners has already adopted building regulations under R.C. 307.37. R.C. 505.78 nullifies the enforcement of building regulations adopted previously by a board of township trustees under R.C. 505.75 after the effective date of building regulations adopted by a board of county commissioners pursuant to R.C. 307.37.

⁶ Had the General Assembly intended to impose upon the Board of Building Standards a requirement that it rescind its certification of a township building department following the Board's certification of the building department of the county in which that township is located,

In your second question you have asked about the status of a certified township building department when a county's building department becomes certified by the Board of Building Standards to enforce the provisions of the OBBC within the county. For the following reasons, it is our opinion that the township building department retains its certification authority to enforce the provisions of the OBBC within the township.

The General Assembly has not included in either R.C. 3781.10 or elsewhere in R.C. Chapter 3781 a provision that nullifies the certification authority previously granted to a township building department upon the Board's certification of a county building department to enforce the provisions of the OBBC within the county. Cf. R.C. 505.78; note five, *supra*. Instead, R.C. 3781.10(E)(7) states that county and township building departments that have received Board certification shall enforce the provisions of the OBBC over the occupancies listed in their certification applications "until such authority is *revoked*," and "without regard to limitation upon the authority of boards of county commissioners under [R.C. Chapter 307] or boards of township trustees under [R.C. Chapter 505]." (Emphasis added.) R.C. 3781.10(E)(6) in turn states that "[s]uch certification may be revoked or suspended with respect to any or all of the building occupancies to which it relates on petition to the board of building standards by any person affected by such enforcement or approval of plans, or by the board on its own motion." The statute further directs, in pertinent part, that "[h]earings shall be held and appeals permitted on any such proceedings for...revocation or suspension of certification in the same manner as provided in [R.C. 3781.101] for other proceedings of the board of building standards." *Id.*

This means that the certification authority of a township building department to enforce within the township the provisions of the OBBC over those occupancies listed in the department's certification application does not terminate automatically when the building department of the county in which the township is located is certified by the Board of Building Standards to enforce the provisions of the OBBC within the county. See R.C. 3781.03; note three, *supra*. A township building department may continue to enforce within the township the provisions of the OBBC over those occupancies listed in the department's certification application until its certification is revoked by the Board. Revocation of a township building department's certification must be carried out in the manner directed by R.C. 3781.10(E)(6). See generally *City of Eastlake v. Board of Bldg. Standards*, 66 Ohio St. 2d 363, 422 N.E.2d 598 (1981); *In re Cincinnati Certified Bldg. Dept.*, 10 Ohio App. 3d 178, 461 N.E.2d 11 (Franklin County 1983).

it could have included language to that effect in R.C. 3781.10. No such language appears in R.C. 3781.10.

It is, therefore, my opinion, and you are advised that:

1. R.C. 3781.10(E) authorizes the Board of Building Standards to certify a township building department for the purpose of enforcing the provisions of the Ohio Basic Building Code within the township.
2. R.C. 3781.10(E) authorizes the Board of Building Standards to certify a county building department for the purpose of enforcing the provisions of the Ohio Basic Building Code within the county in accordance with the jurisdictional limitations set forth in R.C. 3781.03.
3. There is no statutory requirement that the Board of Building Standards rescind its certification of a township building department under R.C. 3781.10(E) after the Board certifies the county building department under that statute for the purpose of enforcing the provisions of the Ohio Basic Building Code within the county in accordance with the jurisdictional limitations set forth in R.C. 3781.03.
4. The certification of a township building department under R.C. 3781.10(E) does not terminate automatically after the Board of Building Standards certifies the county building department under that statute for the purpose of enforcing the provisions of the Ohio Basic Building Code within the county in accordance with the jurisdictional limitations set forth in R.C. 3781.03.

Respectfully,


BETTY D. MONTGOMERY
Attorney General