

STATE OF TENNESSEE

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May 11, 2004

Opinion No. 04-091

State Fire Marshal Adoption of Uniform Fire Code

QUESTION

Does Tenn. Code Ann. § 68-120-107(a)(7), which charges the fire marshal to adopt statewide fire safety standards that are “reasonably compatible” with fire safety standards adopted by local governments, prevent the fire marshal from adopting the fire safety standards contained within a fire code that no local government has adopted?

OPINION

No. So long as the adopted statewide fire safety standards are “reasonably compatible” with those adopted by local governments, which is a determination entrusted by the Legislature to the fire marshal, there is no violation of Tenn. Code Ann. § 68-120-107(a)(7) even though no local government has adopted the same standards.

ANALYSIS

The state fire marshal is charged by Tenn. Code Ann. § 68-120-101 to promulgate rules that set statewide building construction fire safety standards. The statute provides the fire marshal broad discretion either to design the standards or to select the standards wholly or partially from nationally recognized agencies, some of which are listed in the statute. Tenn. Code Ann. § 68-120-101(a)(1). The National Fire Protection Association (NFPA) is one such listed agency. *Id.* The statute charges the fire marshal to develop standards that “shall be reasonably compatible with building construction safety standards adopted by local governments in this state.” Tenn. Code Ann. § 68-120-101(a)(7).

The statute sets out conditions under which a local government may opt out from the application of the fire marshal’s standards. Among those conditions is the requirement that the local government must adopt a building code from two listed options and adopt a fire code from three listed options. Tenn. Code Ann. § 68-120-101(b)(2)(A). One of the listed fire codes is “The Fire Prevention Code (published by the National Fire Protection Association, Inc.) (the “Fire Prevention Code”).” Tenn. Code Ann. § 68-120-101(b)(2)(A)(iii).

Your letter states that in a rule recently promulgated and set to take effect on June 2, 2004, the fire marshal has adopted as Tennessee's new statewide fire code the "Uniform Fire Code (NFPA 1-2003) (the "Uniform Fire Code"). The letter states that the Uniform Fire Code is "completely different" from the current statewide fire code, which is the same "Fire Prevention Code (NFPA 1-2001)" that a local government is statutorily authorized to adopt. The letter adds that local governments are not statutorily authorized to adopt the Uniform Fire Code, which has a historical basis in the Western United States, and that no local government has done so. The letter concludes by asking whether, given these factual predicates, the requirement that the statewide standards be "reasonably compatible" with local standards prevents the fire marshal from adopting the Uniform Fire Code.

On its face, even accepting the above factual predicates, the requirement in Tenn. Code Ann. § 68-120-107(a)(7) that statewide standards be "reasonably compatible" with local standards does not prevent the fire marshal from adopting the Uniform Fire Code, since the legislature has charged the fire marshal to determine in the first instance whether the standards are "reasonably compatible."

Moreover, a court reviewing the fire marshal's determination would require more facts from more sources, particularly from the fire marshal. A comparison of fire codes to determine whether they are "reasonably compatible" would naturally involve some degree of technical input or expertise. Courts historically give deference to an agency's interpretation of the technical requirements of the statutes under which it operates. For instance, in *Profill Development, Inc. v. Dills*, 960 S.W.2d 17, 27 (Tenn. Ct. App. 1997), the Court upheld the determination by the Department of Environment and Conservation that the term "landfill" in a statute included "solid waste processing facilities" as well as landfills. The Court wrote:

The Court finds that the Department has the knowledge, expertise and experience and is charged with the administration of the technical details of the statute. Accordingly, the Department's decisions concerning the applicability of technical terms of the statute are entitled to deference in the same manner as other technical decisions.

Id.

By adopting the Uniform Fire Code, the fire marshal has presumably determined that the Uniform Fire Code is "reasonably compatible" with those codes adopted by local governments in

Tennessee. Accordingly, the fire marshal's determination, which is entitled to deference in any review, is authorized, rather than prohibited, by Tenn. Code Ann. § 68-120-107(a)(7).

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