

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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DEPUTY ATTORNEY GENERAL

July 20, 2009

J. William Degnan
State Fire Marshal
110 Smokey Bear Boulevard
Concord, New Hampshire 03305

Dear Marshal Degnan:

This is in response to your recent request for a formal Attorney General opinion regarding whether or not the State Fire Code (Saf-C 6000) applies to a high-rise condominium building. It is our conclusion that the State Fire Code applies to high-rise condominiums.

RSA 153:5 provides that the State Fire Marshal is to adopt rules to be known as the State Fire Code, which may be done by adopting the most recent edition of the "National Fire Protection Association" code (hereinafter "NFPA") or other recognized codes as rules. The purpose of the State Fire Code is "for the protection from fire and fire hazards for people of the state and for the general welfare of property and people within the state." The State Fire Code applies to new and "existing buildings, structures or equipment." RSA 153:5.

The State Fire Marshal, through the Commissioner, first adopted the NFPA Life Safety Code (hereinafter "LSC") in 1973. The current administrative rules are found in Saf-C 6000. Saf-C 6001.01(1) defines the State Fire Code as "the compilation of all rules inclusive in Saf-C 6000. Saf-C 6008.01(a) adopted NFPA 1, Uniform Fire Code (hereinafter "UFC"), 2003 edition."¹ Saf-C 6008.01(b) provides that the UFC shall apply to "all owners and occupants of existing structures or premises." Saf-C 6008.04 also adopted as part of the State Fire Code NFPA 101, the "Life Safety Code, 2003 edition, which is also applicable to any structure and all owners and occupants of existing structures."

¹ There are a few modifications to the UFC in Saf-C 6008.02 and 6008.03, however the modifications are not relevant to this analysis.

It is our understanding that a question has been raised regarding the applicability of these codes to a high-rise condominium due to the definition of "building" in RSA 153:1, II, which states:

II. "Building" means any structure, framework or housing, public or private, excluding single family dwellings as defined in paragraph X and multi-unit dwellings as defined in paragraph VI, but including tanks, receptacles and containers for the storage of commodities or other materials.

Because this definition of "Building" excludes single family and multi-unit dwellings, the argument has been made that these dwellings are not subject to the State Fire Code. This argument is inconsistent with the statute and rules for the reasons stated herein.

RSA 153:5 states that the administrative rules adopted as the State Fire Code shall apply to "buildings, structures and equipment." Therefore the State Fire Code is not limited specifically to buildings as defined in the statute. While the term "building" is defined in the statute, the term "structure" is not. However it is evident that the term "structure" is intended to be broader in scope than the term "building." The statute uses the term "structure" to define "Buildings," (RSA 153:1, II); as well as "Multi-Unit dwellings," (RSA 153:1, VI) and "Single Family dwellings" (RSA 153:1, X). The definition of "Multi-Unit dwellings" specifically includes "condominiums." Therefore, the term "structure", as used in the statute, includes multiple types of structures, and is not limited to solely "Buildings" in RSA 153:1, II. In fact, these terms are only differentiated within the statute as a whole when it is clear that a provision is not meant to apply broadly. *See* RSA 153:10-a; RSA 153:14, II. As RSA 153:5 makes the state fire code applicable to all "structures" and the term "structures" includes multi-unit dwellings, the code applies to multi-unit dwellings including condominiums.

The court has said that, in interpreting the State Fire Code, the statutes and rules should be looked at as a whole rather than as segments. *Fischer v. N.H. State Building Code Review Board*, 154 N.H. 585, 589 (2006). The UFC and the Life Safety Code (hereinafter "LSC") explicitly provide that they are applicable to structures such as high-rise condominiums or dwellings. The UFC and LSC define "building" as "any structure used or intended for supporting or sheltering any use or occupancy." UFC 3.3.22; LSC 3.3.27. Each code also contains definitions of apartment building and high-rise building as follows:

Apartment Building. A building containing three or more dwelling units with independent cooking and bathroom facilities. UFC 3.3.22.2, LSC 3.3.27.3.

High-Rise Building. A building greater than 75 ft (23 m) in height where the building height is measured from the lowest

level of fire department vehicle access to the floor of the highest occupiable story. UFC 3.3.24.4, LSC 3.3.27.7.

The explanatory material in the UFC in Annex A makes it clear that a condominium is included under the UFC as an “apartment building.”

A.3.3.22.2 Apartment Building. NFPA 101[®], *Life Safety Code*[®], specifies, that wherever there are three or more living units in a building, the building is considered an apartment building and is required to comply with either Chapter 30 or 31 of NFPA 101[®], *Life Safety Code*[®], as appropriate. Townhouse units are considered to be apartment buildings if there are three or more units in the building. The type of wall required between units in order to consider them to be separate buildings is normally established by the AHJ. If the units are separated by a wall of sufficient fire resistance and structural integrity to be considered as separate buildings, then the provisions of Chapter 24 of NFPA 101[®], *Life Safety Code*[®], apply to each townhouse. Condominium status is a form of ownership, not occupancy; for example, there are condominium warehouses, condominium apartments, and condominium offices.

UFC, Annex A, pp. 1-323. The UFC provides that “New and existing apartment buildings shall comply with Section 20.9 and the referenced edition of NFPA 101.” UFC 20.9.1.

The LSC is unambiguous that it applies to all manner of dwellings. See Table of Contents Chapter 24 - One and Two Family Dwellings, Chapter 26 Lodging and Rooming Houses, Chapter 28 and 29 Hotels and Dormitories, Chapter 30 and 31 Apartment Buildings, Chapter 32 and 33 Residential Board and Care Occupancies. LSC Chapter 6 provides for classification of a building based on use. All types of residential facilities are included and are subject to Chapters 24 through 31. LSC Chapter 6.1.8, *et seq.* Further, if a building has mixed use occupancy, it is generally required to comply with the most restrictive requirements based on the types of occupancy involved. LSC 6.1.14.3.1.

Additionally, the UFC provides that the Authority Having Jurisdiction (referred to as the “AHJ”) is “authorized to render interpretations of this Code.” UFC 1.7.2.1, see also 3.2.2 and explanatory materials in Annex A, p. 1-322, (“[W]here public safety is primary, the AHJ may be a federal, state, local, or other regional department or individual such as a fire chief, fire marshal . . . or others having statutory authority.”). Saf-C 6001.01(e) specifically designates the State Fire Marshal as the AHJ.

It is our understanding that the State Fire Marshal has consistently interpreted the State Fire Code as applying to multi-unit dwellings as well as other dwelling structures as

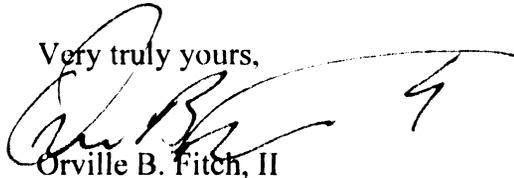
determined by their occupancy. This interpretation was upheld in *Fischer v. N.H. State Building Code Review Board*, 154 N.H. 585 (2006). In *Fischer*, the New Hampshire Supreme Court held that the Fire Marshal's classification in regards to one and two family residences, and concomitant application of the State Fire Code to those properties, was appropriate under the State Fire Code. *Id.* at 591. The Supreme Court has also acknowledged that the agency's interpretation of its rules is entitled to deference. *Id.* at 589. The doctrine of administrative gloss would also dictate that, to the extent there is any ambiguity in the statute, the long-standing interpretation of the State Fire Marshal is conclusive. *DHB, Inc. v. Town of Pembroke*, 152 N.H. 314, 321 (2005).

RSA 541-A concerning the adoption of administrative rules specifically provides for comments and objections to proposed agency rules by the Joint Legislative Committee on Administrative Rules (hereinafter "JLCAR") if the Committee believes the rule is beyond the authority of the agency or contrary to the intention of the Legislature. RSA 541-A:13, IV. There was no preliminary or final objection to adoption of the State Fire Code by JLCAR based on the UFC and LSC applying to structures that included multi-unit dwellings for residential use.

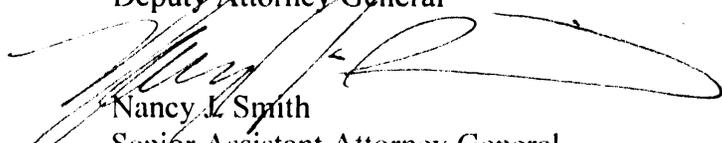
Finally, as a matter of public policy, statutes and rules that are intended to promote public safety are to be interpreted liberally to effectuate their purpose. *State v. Kunze*, 110 N.H. 126, 127 (1970); see RSA 153:25. An overly literal interpretation of statutory language that would allow a property owner to exempt themselves from the statutory regulations intended to promote the "general welfare of property and people within the State" would be contrary to the purpose of the State Fire Code. RSA 153:5; *Kearsarge Soaring Association v. Kearsarge Valley Golf Club, Inc.*, 123 N.H. 263, 266 (1983).

For the reasons stated herein, it is our conclusion that the State Fire Code applies to a high-rise condominium structure.

Very truly yours,



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