

N.D.A.G. Letter to Bonner (Jan. 24, 1986)

January 24, 1986

Ms. Margy Bonner
Williston City Attorney
P.O. Box 1306
Williston, ND 58802

Dear Ms. Bonner:

Thank you for your letter of January 9, 1986, concerning the ability of a city to enforce its own building code without compliance with the State Building Code as found in N.D.C.C. Ch. 54-21.3.

A portion of the State Building Code, N.D.C.C. § 54-21.3-05, provides a city with the authority to enforce the State Building Code if it so desires. There is no requirement that the State Building Code be enforced by a city. Furthermore, N.D.C.C. § 40-05-02(7) provides the cities with the authority to prescribe for the manner of construction of buildings, structures, and walls.

Reading these two statutes together, the inescapable conclusion is that the city has the discretion to determine whether to enforce the State Building Code as its own city building code or whether the city wishes to adopt its own building code. Should the city adopt the State Building Code as its own and further desire to amend it to conform with local needs, such authority is provided by law so long as the amendments do not diminish the standards set by the State Building Code. N.D.C.C. § 54-21.3-03(2).

Finally, you bring to my attention the opinion issued by this office on December 19, 1979, and ask whether I concur with this opinion. In the 1979 opinion, this office concluded that a building in the county need not comply with the State Building Code where the county had not elected to enforce the State Building Code. With this conclusion, I am in agreement given the language of N.D.C.C. § 54-21.3-05 and the lack of legislative response since the rendering of this opinion.

Sincerely,

Nicholas J. Spaeth

dfm