



2004 - 165

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

June 23, 2004

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Evan K. Major, Jr.  
Superintendent  
Shelby County Schools  
410 East College Street  
Post Office Box 1910  
Columbia, Alabama 35051-1910

SEE ALSO THE OPINION ISSUED TO  
WALTER A. BELL, COMMISSIONER,  
DEPARTMENT OF INSURANCE,  
DATED 8-23-2005, A.G. NO. 2005-183

**Building Permits – Schools – Projects**

The Shelby County Board of Education (“Board”) is only required to comply with the building code of the Alabama Building Commission (“Building Commission”), not local building codes. Board projects are subject to review and inspection only by the Building Commission, not by local governments. The Board is not required to pay for local permits.

Dear Superintendent Major:

This opinion of the Attorney General is issued to your request on behalf of the Shelby County Schools.

QUESTIONS

(a) Do county school systems, which are state entities, have to pay for building permits for building projects?

(b) Because county school systems projects are reviewed and inspected by the State of Alabama Building Commission, are projects subject to review and inspection by local and county agencies?

(c) Because municipalities and counties have adopted various editions of building codes and building projects that are reviewed by the Alabama State Building Commission, are these

projects subject to other codes than those adopted  
by the Building Commission?

### FACTS AND ANALYSIS

Local city and county agencies are directly responsible for overseeing building projects in each of their respective jurisdictions. Permitting, review, and inspections are directly performed by these entities for building and construction projects by these agencies. Local and county school systems perform various building and construction projects and, as such, submit their projects to the State Building Commission for review and approval, but the projects are conducted physically in the area normally recognized as falling in the jurisdiction of either the county or local regulations. The inspectors of the county or city agencies sometimes require school systems to be subject to their licensing and inspection regulations. Further, the local jurisdiction has frequently adopted building codes.

“Local governments do not possess the statutory authority to tax the state or its agencies. Therefore, local governments do not possess the statutory authority to charge [an agency of the state] permit or inspection fees.” Opinion to Honorable R.G. Britton, Commissioner, Board of Corrections, dated January 6, 1981, A.G. No. 81-00165. County boards of education are not agencies of the counties, but local agencies of the state, charged by the Legislature with the task of supervising public education within counties. *Bd. of School Comm'rs of Mobile County v Architects Group, Inc.*, 752 So. 2d 489 (Ala. 1999). The *Britton* opinion also held that, when a state officer or employee is acting within the scope of his or her authority and on behalf of the state agency, a local government's licensing requirements are not applicable. A.G. No. 81-00165 at 3; see also opinion to Honorable James W. Warr, Director, Department of Environmental Management, dated January 14, 2002, A.G. No. 2002-119.

“The code of minimum building standards promulgated and enforced by the Building Commission shall be applicable only to all state buildings and construction, schoolhouses . . . .” ALA. CODE § 41-9-162(a) (2000). “State building and construction” is defined as “[a]ll buildings and other structures erected or acquired by or in behalf of the State of Alabama or any of its agencies or instrumentalities.” ALA. CODE § 41-9-160(1) (2000). “Schoolhouse” is defined as “[a]ny building or other structure erected or acquired by the public schools of Alabama . . . .” ALA. CODE § 41-9-160(2) (2000). Furthermore, “[n]o county or municipality shall apply [its] building code to state buildings and construction of public schoolhouses.” ALA. CODE § 41-9-166 (2000).

Municipalities and counties may exercise only the authority given to them by the Legislature. *Jefferson County v. Johnson*, 333 So. 2d 143, 145 (Ala. 1976) & *Arrington v. Associated Gen. Contractors of America*, 403 So. 2d 893, 902 (Ala. 1981), *cert. denied*, 455 U.S. 913 (1982). The Legislature has expressly granted them authority to enforce only their own building codes. ALA. CODE § 11-43-59 (1989); ALA. CODE § 34-14A-12 (2002). Authority to enforce the state building code lies exclusively with the Building Commission. ALA. CODE § 41-9-165 (2000).

To the extent that the opinion to Arnold W. Umbach, Jr., Opelika City Attorney, dated September 27, 1989, A.G. No. 89-00446, holds that state agencies must comply with local building codes, it is hereby overruled. Likewise, to the extent that the *Britton* opinion holds that local governments can inspect and regulate construction by state agencies to ensure compliance with the state building code, it is hereby overruled.

#### CONCLUSION

The Shelby County Board of Education is only required to comply with the building code of the Alabama Building Commission, not local building codes. Board projects are subject to review and inspection only by the Building Commission, not by local governments. The Board is not required to pay for local permits.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General

By:

  
CAROL JEAN SMITH  
Chief, Opinions Division

TK/GWB  
141196v4/59220