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Honorable Gary Tanner
Member, Alabama State Senate
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5750 McDonald Road
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Counties - Building Codes - Health,
County Boards of - Inspections - Mobile
County

Both the Mobile County Commission and the county board of health can enact regulations relating to inside plumbing for unincorporated areas of the county. County building inspectors and board of health plumbing inspectors can perform inspections of inside plumbing in these areas. Regulations of the board of health control in case of any conflict.

Dear Senator Tanner:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can the Mobile County Commission enact building code provisions relating to inside plumbing and assume control of building inspections related to inside plumbing?

FACTS AND ANALYSIS

Your request states as follows:

In 1992, the Legislature enacted section 34-14A-12 of the Code of Alabama, which authorized the county commission of a county to adopt building codes

in the unincorporated areas of the county and conduct inspections to assure compliance with the applicable building codes. Pursuant to this authority, the Mobile County Commission has adopted building codes and conducts inspections prior to occupancy in the unincorporated area of the county. At the current time, however, the Mobile County Health Department regulates the installation of inside plumbing and conducts plumbing inspections in the unincorporated areas of the county. The Mobile County Health Department cites section 22-26-5 of the Code of Alabama as authority for its regulation, which Code section was enacted by a 1969 act of the Legislature. It is my understanding that only the Mobile and Jefferson County Health Departments inspect plumbing. One obvious problem this arrangement causes in Mobile County is that two different entities are required to conduct a building inspection prior to occupancy of any new construction.

Section 34-14A-12 of the Code of Alabama reads, in pertinent part, as follows:

The county commissions of the several counties are authorized and empowered to adopt building laws and codes by ordinance which shall apply in the unincorporated areas of the county. . . . The county commission may employ building inspectors to see that its laws or codes are not violated and that the plans and specifications for buildings are not in conflict with the ordinances of the county and may exact fees to be paid by the owners of the property inspected. . . . The county commissions, municipalities, and other public entities are hereby authorized to enter into mutual agreements, compacts, and contracts for administration and enforcement of their respective building laws and codes.

ALA. CODE § 34-14A-12 (2002).

This provision authorizes county commissions to enact building laws and codes and to employ personnel to perform inspections to ensure that the county's building laws and codes are not violated. It further authorizes county commissions to enter into mutual agreements, compacts, and contracts for the administration and enforcement of their respective building laws and codes.

Permits for the installation of plumbing outside the jurisdiction of municipal corporations are governed by section 22-26-5 of the Code of Alabama, which states as follows:

The issuance of permits for the installation of plumbing within structures located outside the jurisdiction exercised by municipal corporations shall be in conformance with the rules and regulations of the State Board of Health and/or county boards of health, and the inspection and approval of the same shall be the function of the county health departments.

ALA. CODE § 22-26-5 (1997). This Office has specifically stated that this statute gives county boards of health jurisdiction over inside plumbing. Opinion to Bernard H. Eichold, Health Officer, Mobile County Health Department, dated April 22, 1992, A.G. No. 92-00245.

The applicable rule of statutory construction provides that specific provisions relating to specific subjects are understood as exceptions to general provisions relating to general subjects. *Ex parte Jones Mfg. Co. Inc.*, 589 So. 2d 208, 211 (Ala. 1991); *Murphy v. City of Mobile*, 504 So. 2d 243, 244 (Ala. 1987); *Herring v. Griffin*, 211 Ala. 225, 226, 100 So. 202, 203 (1924). The Appellate Court for the Second District of Illinois recently applied this rule in the context of competing fire codes of a fire district and county:

While the County has the power to pass fire ordinances in connection with its authority to regulate building construction, ***the District's grant of authority is more specific in that it relates exclusively to fire protection ordinances. Therefore, strictly speaking, the District's ordinances supercede conflicting County ordinances.*** We note, however, that in this case, the County's ordinances are not repugnant to the District's ordinances. Therefore, we do not have to resolve whether there is an actual conflict requiring one ordinance to trump the other. Rather, both ordinances should be given effect, as ***both the County and the District have concurrent jurisdiction regarding fire prevention laws.*** Thus, we conclude that Stonewall must comply with each ordinance at issue here.

Wauconda Fire Protection Dist. v. Stonewall Orchards, 797 N.E.2d 1130 (Ill. App. Ct. 2003) (emphasis added).

The Alabama Legislature has similarly seen fit to grant concurrent jurisdiction to the counties and to the county boards of health to regulate inside plumbing. Therefore, both entities may enact and enforce their own regulations

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relating to inside plumbing. In the case of conflicting regulations, however, because the county is granted general authority to adopt "*building* laws and codes," as opposed to the specific grant of authority to the county board of health to regulate "plumbing," the regulation of the county board of health controls.

CONCLUSION

Both the Mobile County Commission and the county board of health can enact regulations relating to inside plumbing for unincorporated areas of the county. County building inspectors and board of health plumbing inspectors can perform inspections of inside plumbing in these areas. Regulations of the board of health control in case of any conflict.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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