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ADMINISTRATIVE LAW: Incorporation by Reference.

MOBILE HOMES: Fire Protection Equipment.

STATUTES: Severability.

A vague and indefinite reference in a regulatory statute to a standard prescribed by an unidentified, private, non-governmental body is void as an unconstitutional delegation of legislative power.

A void provision in a statute may be excised where the legislature would have intended the act to be enforced without the excised provision and it is possible to enforce the statute without violating the intent of the legislature.

Where the statute requires a mobile home to be equipped with smoke detection equipment with an alarm and a fire extinguisher if it is manufactured or sold in the state or brought into the state, for use as a dwelling, the occurrence of any one of these events after the effective date of the act would require such equipment in the mobile home although, where the owner brings the mobile home into the state for use as a dwelling, he has 90 days to comply with the statutory requirement.

Opinion No. 4870 June 13, 1975.

Representative DeForrest Strang
House of Representatives
Capitol Building
Lansing, Michigan 48901

You have requested my opinion as to the meaning of the language of 1974 PA 133, § 2; MCLA 125.772; MSA 4.565(2). Specifically you ask:

> "Does Section 2, paragraph (2), subparagraph (c) exempt from this Act the *current* resale of mobile homes which were manufactured, sold or purchased prior to the effective date of this Act and unequipped with smoke detection equipment and fire extinguishers?

1974 PA 133, § 2, *supra,* provides:

> "(1) A mobile home manufactured or sold in this state or brought into this state for use therein as a dwelling shall be equipped with an approved smoke detection system with an alarm and a multipurpose fire extinguisher having a minimum 2A-10B-C rating and approved by a nationally recognized independent testing laboratory. The owner of a mobile home brought into this state for use as a dwelling shall have 90 days to comply with this act.
>
> (2) This act shall not apply to:
>
> (a) A recreational vehicle
>
> (b) A motor home
>
> (c) A mobile home manufactured, sold, or purchased prior to the effective date of this act."

The meaning of 1974 PA 133, § 2 must be determined by the natural meaning of the language used in the statute, *People* v *Lowell,* 250 Mich

349, 358; 230 NW 202 (1930) and the language must be construed to carry out the legislature's intentions and promote the general purposes of the act. *Consumers Power Co.* v *Corporations and Securities Commission,* 326 Mich 643; 40 NW2d 756 (1950)

And in *King* v *Second Injury Fund,* 382 Mich 480, 492; 170 NW2d 1 (1969), the Court stated another fundamental rule of statutory construction, as follows:

> "In many decisions we have followed the rule of statutory construction as stated in 2 Sutherland, Statutory Construction (3d ed), § 4705, p 339:
>
> > 'It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.' "

Clearly, the legislature, in stating "manufactured or sold in this state or brought into this state for use therein" in the disjunctive, intended that the occurrence of any one of these events after the effective date of the Act would require the equipping of the mobile home in accordance with Subsection 2(1). Similarly, Subsection 2(2) in exempting mobile homes "manufactured, sold, or purchased prior to the effective date of this act" also states the transactions in the disjunctive and requires an interpretation that the occurrence of any one of the events prior to the effective date of the Act exempts the mobile home from the Act *but only until another event occurs which requires the application of Subsection 2(1).*

For example, a mobile home manufactured prior to the effective date of this Act is exempt under Subsection 2(2). However, if it is sold in this state after the effective date of the Act it must comply with the Act. However, if the mobile home is brought into this state by the owner for use as a dwelling after the effective date of the Act, the owner has 90 days within which to comply with the requirements of the Act. Further, since there is no distinction in the Act as to sold or resold, it can only be concluded that even if a mobile home is manufactured, sold or purchased prior to the effective date of the Act, either a subsequent sale or the bringing of the mobile home into this state for use herein as a dwelling would require compliance with Subsection 2(1).

This interpretation is consistent with the language of the Act and its general purpose to protect mobile home occupants from disastrous fires in a manner which would not place an undue burden on present owners of mobile homes until their unit was either resold or brought into this state for use as a dwelling.

Although your question does not involve the constitutional validity of the provision in Subsection 2(1) of the Act which incorporated by reference the standards for fire extinguishers of a private non-governmental body, it is considered advisable to include my answer to the question in this opinion for the benefit of the officials who are to enforce this Act.

1974 PA 133, § 2(1), *supra,* is here quoted again with the language proposed to be excised in italics:

> "A mobile home manufactured or sold in this state or brought into this state for use therein as a dwelling shall be equipped with an approved smoke detection system with an alarm and a multipurpose fire extinguisher having *a minimum 2A-10B-C rating and approved by a nationally recognized independent testing laboratory.* The owner of a mobile home brought into this state for use as a dwelling shall have 90 days to comply with this act."

The reference to 2A-10B-C as a fire extinguisher rating refers to a rating system set forth in detail in Standard No. 10 of the National Fire Protection Association, 1974 Edition, which classification and rating system was originally the product of Underwriters' Laboratories, Inc., and Underwriters' Laboratories of Canada.

Under the principles set forth in *Coffman* v *State Board of Examiners in Optometry,* 331 Mich 582; 50 NW2d 322 (1951) and in OAG, 1955-56, No. 2004, p 167 (April 6, 1955), it is clear that the vague and indefinite reference to a standard of an unidentified, private, non-governmental body is void as an unconstitutional delegation of legislative power. This is apparent when it is considered that the National Fire Protection Association could amend the standard and such amendment would become the law of Michigan. Thus, there would result an unconstitutional delegation of legislative power to a private organization in that the definitions and requirements of a 2A-10B-C fire extinguisher could be modified at any time by the private organization and thereby become Michigan law.

As in *Coffman, supra,* the phrase "having a minimum 2A-10B-C rating and approved by a nationally recognized independent testing laboratory" may be excised from Subsection 2(1) of the Act without affecting the validity of the remainder of the Act. In effect, the remaining language would subject the required smoke detection system and multipurpose fire extinguisher to the approval of the Construction Code Commission of the Department of Labor as provided in Subsection 3(1) of the Act. The Commission should adopt rules to effectuate this provision.

This opinion should not be read to prohibit the incorporation by reference of standards of a private, non-governmental body either in administrative rules or statutes if the standard is sufficiently fixed and identified as to the organization and restricted to the standard then in existence and identified by the date of the publication. (See OAG, 1955-56, No. 2004, p 167 (April 6, 1955) *supra.*

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