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STATE CONSTRUCTION CODE ACT: Inspection by private organizations.

ADMINISTRATIVE LAW: Contracts with private organizations for technical assistance.

Governmental units may contract with private organizations for inspection or other technical assistance which serves to assist the enforcing agency in the administration and enforcement of the State Construction Code Act and the State Construction Code adopted pursuant thereto. However, the designated enforcing agency must be a public official or a governmental agency and all decisions and official actions based upon inspections by private organizations must be made by the enforcing agency.

Opinion No. 4885

August 15, 1975.

Mr. Keith Molin, Director
Department of Labor
Department of Labor Building
300 East Michigan Avenue
Lansing, Michigan 48926

You have requested my opinion on the following question arising under the provisions of the State Construction Code Act of 1972¹ hereinafter referred to as the Act and the State Construction Code adopted pursuant thereto, hereinafter referred to as the Code:

"May a county, city, village or township engage the services of a qualified private firm to provide construction inspection and other related functions, and what, if any, guidelines must be established?"

The applicable statutory provisions of the Act provide, in pertinent part:

"Sec. 9. (1) Except as otherwise provided in this section, a county is responsible for administration and enforcement of this act and the code throughout the county. A city or village may by ordinance assume responsibility for administration and enforcement of this act in the city or village. A township may by ordinance assume responsibility for administration and enforcement of this act throughout the township except in cities or villages. *Unless otherwise provided by local law or ordinance, the legislative body of a county, city, village or township responsible for administration and enforcement of this act shall designate an enforcing agency that shall discharge the responsibilities of the county, city, village or township under this act.* Counties, cities, villages or townships may provide by agreement for joint enforcement of this act. *Subject to the other provisions of this act, an enforcing agency may be any official or agent of a county, city, village or township. . . .*" (Emphasis supplied)

It is noted that the emphasized language of Subsection 9(1) of the Act requires that an "enforcing agency" be designated by the county, city, village or township to discharge a governmental unit's responsibilities under

¹ 1972 PA 230; MCLA 125.1501 *et seq*; MSA 5.2949(1) *et seq*.

the Act and that the "enforcing agent" may be "any official or agent" of the governmental unit.

In my opinion the powers and duties imposed on the designated "enforcing agency" by Sections 10, 11, 12, 13 and 14 of the Act must be exercised and performed by a public official or governmental agency. For example, the power of the enforcing agency to suspend, revoke or cancel a building permit under Subsection 11(2) is a governmental function which is not properly delegable to private third parties. Similarly Subsection 14(1) requires that the enforcing agency maintain a record of decisions of the board of appeals which are open to public inspection. This provision also indicates that the designated enforcing agency must be a public official or governmental agency which can afford the continuity of operation which would be lacking with a private organization.

Thus, it is the designated enforcing agency which has the primary responsibility for the administration of the Act and the Code and that designated enforcing agency must be a public official or a governmental agency.

In my view, the governmental units may contract with private organizations in accordance with the requirements of their local ordinances for inspection or other technical assistance which would assist the enforcing agency in its administration and enforcement of the Act and Code. It would be necessary for the governmental unit to formally designate the private individuals performing inspection duties as inspectors for the enforcing agency and to provide the necessary official credentials required by Subsection 12(2) of the Act. Any formal action on the basis of such inspections or other technical services should be made by the designated enforcing agency and not by the private individuals performing the inspections or other technical services.

Under this view, no guidelines other than the Code are needed except those of an administrative nature to insure that it is the enforcing agency which takes the required official action rather than the private organizations.

In summary, it is my opinion that the designated enforcing agency must be a public official or governmental agency and that inspection functions or other technical assistance may be performed under a contract with private organizations, but all decisions and official actions based on such inspections or technical advice must be made by the enforcing agency.

FRANK J. KELLEY,
Attorney General.
