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STATE CONSTRUCTION CODE: Schools and School Districts

SCHOOLS AND SCHOOL DISTRICTS: State Construction Code

The provisions of the State Construction Code do not apply to the construction of public and nonpublic school buildings. Schools, however, are subject to the statute, 1937 PA 306; MCLA 388.851 et seq; MSA 15.1961 et seq, dealing with the regulation of the construction of public and nonpublic school buildings.

Opinion No. 4914 January 13, 1976.

Mr. Keith Molin, Director
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You have requested my opinion on the following question:

> "To the extent it does not conflict with other statutes, does the Construction Code Act of 1972 apply to the construction of public and nonpublic schools in the State of Michigan?"

The subject of school construction has been addressed by the legislature in 1937 PA 306; MCLA 388.851 *et seq;* MSA 15.1961 *et seq.* This law was enacted to regulate the construction, reconstruction and remodeling of public and nonpublic buildings and additions to such buildings. 1937 PA 306, § 1(a), *supra,* provides that building plans be submitted to the superintendent of public instruction for his approval prior to construction. Written approval is required from the state fire marshal, as to fire safety factors, and from the health department with jurisdiction, as to water, sanitation and food handling, before the superintendent of public instruction may authorize building to begin. 1937 PA 306, § 3(1), *supra,* requires on site inspection by the state fire marshal during and after construction is completed.

The scope of 1937 PA 306, *supra,* has been examined in previous opinions of this office, and it has been found that under the provisions of that act the state legislature has preempted the area of school construction and has delegated its regulation to the superintendent of public instruction. In an opinion concerning the power of a township to require a permit to build a school building, it was said:

> ". . . Although it is clear that the legislature may delegate some control to local state agencies, there is absolutely no evidence that any such control has been delegated in the matter of school construction. In fact, the legislature by the terms of P.A. 1937, No. 306, *has expressly pre-empted the entire field of regulation of school construction. . . .*" (emphasis added)
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> 2 OAG, 1955-1956, No 2792, pp 687, 688 (November 21, 1956).
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> See also, OAG, 1951-1952, No 1350 p 160 (January 10, 1951).

The State Construction Code, 1972 PA 230; MCLA 125.1501 *et seq;* MSA 5.2949(1) *et seq,* authorizes the establishment of a state construction

code to be applicable throughout the state. 1972 PA 230, § 8, *supra,* provides for the election by local municipal units to use their own construction codes if based on nationally recognized models. The act further provides for building permits, inspection of buildings, regulations as to building materials and contractors. In short, the act is a general law governing construction in this state, with certain limitations.

However, 1972 PA 230, § 28(3), *supra,* reads, in pertinent part:

> ". . . [N]othing in this act shall be deemed to repeal, amend *or otherwise affect* Act No. 306 of the Public Acts of 1937 . . . ." (emphasis added)

This language is entirely consistent with the legislative preemption of the entire field of regulation of school construction in 1937 PA 306, *supra.* The specific area of school construction regulation has been delegated to the superintendent of public instruction and others by 1937 PA 306, *supra,* and by the plain language of 1972 PA 230, § 28(3), *supra,* nothing is to affect that exclusive delegation.

It is a basic canon of statutory construction that when language is clear and plain on its face, it is not subject to judicial construction. As stated by the Michigan Supreme Court in *Pittsfield Township School District* v *Washtenaw County Board of Supervisors,* 341 Mich 388, 397-398; 67 NW2d 165, 170 (1954):

> ". . . In *City of Grand Rapids* v *Crocker,* 219 Mich 178, 182, 183, the general rule to be followed in construing a statute was stated as follows:
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> " '. . . If the language employed in a statute is plain, certain and unambiguous, a bare reading suffices and no interpretation is necessary. . . .' "

It is clear from the language of 1972 PA 230, § 28(3), *supra,* that the legislature did not intend to include the construction of public and nonpublic schools within the provisions of such statute.

This conclusion gains further support from the legislative debates concerning House Bill No. 5252, which became 1972 PA 230, *supra.* The House of Representatives was presented with an amendment to House Bill No. 5252, which read as follows:

> "The state code shall be applicable throughout the state with regard to the public or private school buildings unless a school authority having jurisdiction over a school building agrees that a local code be applicable."

3 Mich House Journal 1971, Regular Session, p 3601, 3603. That amendment was defeated by the House which gives rise to the inference that this language was not consistent with the intent of the legislature.

As stated in 2A Sutherland, *Statutory Construction,* § 48.18, p 224:

> ". . . Generally the rejection of an amendment indicates the legislature does not intend the bill to include the provisions embodied in the rejected amendment."

The Michigan Supreme Court considered an analogous situation in *People* v *Adamnowski,* 340 Mich 422, 429; 65 NW2d 753, 757 (1954), where a fine imposed on an overweight truck was contested. A formula for determining the fine which would have been consistent with the state's position had been the subject of an amendment which failed to pass. The Court stated:

> "When the legislature affirmatively rejected the statutory language which would have supported the State's present view, it thereby made its intention crystal clear. We should not, without a clear and cogent reason to the contrary, give a statute a construction which the legislature itself plainly refused to give. This Court said in *Wayne County* v *Auditor General,* 250 Mich 227, 235, in construing an act for the distribution of highway funds, that:
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> " 'The legislative history of the 1927 act reveals the fact that while it was pending in the legislature, a proposed amendment was rejected which, if embodied in the act, would have rendered it subject to plaintiff's interpretation and not to that of the defendant. * * * Surely this gives rise to the inference that the legislature did not intend the act should be subject to the interpretation now urged by plaintiff.' "

1972 PA 230, § 8(4), *supra,* reads as follows:

> "Locally adopted codes shall not apply to public or nonpublic schools within the political subdivision without concurrence by the school authorities having jurisdiction."

The above quoted language merely reiterates the legislative command in 1937 PA 306, § 3(2), *supra,* that a municipal fire protection code may not be made applicable to the construction of school buildings in the absence of approval by the local school authorities.

In view of the foregoing, it is my opinion that 1972 PA 230, *supra,* does not apply to the construction of public and nonpublic school buildings in Michigan. Rather, 1937 PA 306, *supra,* remains the controlling legislation dealing with the regulation of the construction of public and nonpublic school buildings.

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