

heretofore appropriated in 1970 PA 199; namely, the funds appropriated in 1970 PA 199 have lost their "state" character and are funds solely under the control of the state housing development authority. As mentioned in *Monticello, supra*, the expenditure of the funds in 1970 PA 199, §8 is not compulsory in nature, but rather is permissive. Therefore, no authority exists for the purported reappropriation, transfer, and reversion of funds appropriated by 1970 PA 199, §8. Section 11 of 1974 PA 238, having no basis for implementation thereof, is unconstitutional in that it attempts to control funds no longer subject to the authority of the legislature.

FRANK J. KELLEY,
Attorney General.

741028.1

STATE CONSTRUCTION CODE: Authority of a city, village or township to exempt itself from application.

A city, village or township may only elect to exempt itself from the State Construction Code Act and state construction code if the local ordinance adopting a nationally recognized building code is passed within 6 months of the promulgation of the state construction code.

Once a city, village or township has elected to exempt itself from the State Construction Code Act and the state construction code it cannot void that election.

A city, village or township which has elected to exempt itself from the State Construction Code Act and the state construction code is responsible for the administration and enforcement of its codes and would not be entitled to any of the State services provided in the Act.

Opinion No. 4843

October 28, 1974.

Honorable William Faust
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion with respect to several questions which have arisen concerning the State Construction Code Act (1972 PA 230, as amended by 1974 PA 180).¹ Specifically, you ask:

"(1) Can a municipality adopt the State Code and, at a later date, choose to exempt itself as provided by the Act?

"(2) Can a municipality choose to exempt itself from the State Code, as provided by the Act, and then at a later date, choose to void its exemption?

"(3) If a municipality choose(s) to exempt itself from the Code, will the municipality receive any of the State services as provided in the Act? (i.e. services of the Attorney General in the case of a suit brought against a municipality for enforcement of its own adopted code.)"

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

The applicable statutory provisions of the State Construction Code Act, hereinafter referred to as the Act, provide as follows:

“Sec. 8. (1) This act and the code are applicable throughout the state except that a city, village, or township may elect to exempt itself from this act and the code by adopting and enforcing a nationally recognized model building code and other nationally recognized model codes. A city, village, or township may make this election by the passage of an ordinance adopting for it by reference or otherwise without amendment a nationally recognized model building code and other nationally recognized model codes. A city, village, or township which elects not to be governed by this act and the code shall review and update its codes at least once every 3 years by adopting without amendment all changes thereto accepted by the bodies promulgating the nationally recognized model codes. However, a city, village or township adopting nationally recognized model codes may approve amendments to those codes by ordinance. The amendments shall become effective 60 days after passage of the ordinance and 60 days after a certified copy thereof is delivered to the commission, unless the commission determines after a public hearing that the codes, as amended, do not adequately protect the health, safety, or welfare of the people of the city, village, or township, or that the amendments tend to unnecessarily increase construction costs or restrict the use of new materials, products or methods of construction or provide preferential treatment to types or classes of materials, products or methods of construction, or that the amendment obstructs the substantive uniformity of building codes within a region or locality in the state.

“(2) The state construction code or any of its sections shall go into effect 6 months after its initial promulgation. The 6 month delay provided herein does not apply to rules promulgated to implement sections 19 and 21 and the requirements of barrier free design of this act and code from which a city, village, or township may not elect to exempt itself under subsection (1). The 6 month delay does not apply to amendments to the code or any of its sections after the initial promulgation. A city, village, or township which elects to exempt itself from this act and the code may do so within 6 months of the promulgation of the code in the manner provided in subsection (1) except that any amendments it adopts at that time are subject to review by the commission as set forth in subsection (1) within 90 days after a copy of the adopted amendments is delivered to the commission by certified mail with return receipt requested.

“(3) A city, village, or township which elects to exempt itself from this act and the code is responsible for administration and enforcement of its codes.”

In *Chamski v Wayne County Board of Auditors*, 288 Mich 238, 258; 284 NW 711 (1939), the Court said:

“Statutes should be so construed, if possible, as to give full effect to every part and render no portion nugatory, every clause and word being presumed to have some force and meaning.”

This rule was again stressed in *King v Second Injury Fund*, 382 Mich 480, 492; 170 NW2d 1 (1969), wherein the Court stated:

“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.’”

Applying these principles to your first question, as to whether a municipality (i.e., city, village, or township) may adopt the State Code and at a later date choose to exempt itself, it is my opinion that subsection 8(2) of the Act, in clear and unambiguous language, provides that a city, village or township may only exempt itself from the application of the Act and the code if a local ordinance adopting a nationally recognized building code is passed “within 6 months of the promulgation of the code.” There is no provision in the statute which permits a city, village, or township to make an election after the 6 month period has expired. Had the legislature intended that a later election could be made, it could have easily stated that intention by express statutory language. Indeed, if the legislature had intended to permit an election after the 6 month period, it could have accomplished this by omitting any reference to a 6 month time period.

This conclusion is further bolstered by the provision in subsection 8(2) which delays the effective date of the code for 6 months to allow cities, villages, or townships time to make an election between the State Code and the adoption of a nationally recognized model building code of their own choosing.

As additional evidence of the legislature’s intent to require adherence to the 6 month time frame, Section 24 of the Act provides, in pertinent part, as follows:

“Sec. 24. Until 6 months after promulgation of the code, construction regulations heretofore or hereafter adopted by a county, city, village or township continue in effect unless repealed by local law or ordinance. Thereafter, construction regulations adopted by a county, city, village or township shall be deemed repealed and invalid, except as provided in section 8. . . .”

In view of the suggestion in your first question that the local municipality “adopts” the State Code, it is important to note that the State Code is automatically applicable throughout the State unless a city, village, or township elects to exempt itself within the 6 months period.

Your second question as to whether a municipality may exempt itself from the Act and then later void its exemption is answered by the following sentence in Section 24 of the Act, which provides:

“. . . Thereafter, construction regulations adopted by a county,

city, village or township shall be deemed repealed and invalid, except as provided in section 8. . . .”

It is clear that the legislature intended to prohibit the adoption of construction regulations by a city, village or township after the 6 month period has elapsed except for changes required to conform to its adopted national code and amendments submitted to the Construction Code Commission in accordance with Section 8 of the Act. Certainly the passage of an ordinance by the governmental unit repealing all of its construction regulations in an attempt to void an earlier exemption from the Act and State Code would be contrary to Section 24, and under the express language therein, would be deemed invalid. As previously stated, subsection 8(2) permits one election by such local governmental unit to exempt itself from the Act and code and this election must be made within the 6 month period provided. Any other conclusion would frustrate the avowed purposes of the Act to bring continuity and a degree of uniformity to the construction regulations in this State and would create an undue hardship on the construction industry which, in the event of a repeal of a locally adopted national building code, would be required to conform to different requirements in the state construction code.

Accordingly, it is my opinion that in the absence of enabling legislation, once a city, village, or township has elected to exempt itself from the Act and the code in accordance with Section 8 of the Act it cannot then void that election.

Your third and last question as to the availability of state services to a municipality, which has elected to exempt itself from the Act and code under Section 8 of the Act, is answered by subsection 8(3) of the Act, which provides:

“A city, village, or township which elects to exempt itself from this act and the code is responsible for administration and enforcement of its codes.”

In my opinion, subsection 8(3) clearly provides that a city, village, or township is responsible for the administration and enforcement of its codes if it elects to exempt itself from the Act and the code. Accordingly, such local governmental unit would not be entitled to any of the State services provided for in the Act in connection with the implementing the Act and the code.

In summary, it is my opinion that each of the three questions posed is answered in the negative.

FRANK J. KELLEY,
Attorney General.