

Opinion No. 114.

Fire Marshal—Marshal, Fire—Protection, Fire—Exits, Public Buildings.

Held: The provisions of Chapter 114, Laws of 1943, must be enforced by the State Fire Marshal, but Chapter 114 does not repeal Section 2737.1, Revised Codes of Montana, 1935, as amended, and the latter section is a grant of supervisory powers to the State

Fire Marshal concerning the adequacy of fire exits in the building enumerated in the section.

January 15, 1946.

Mr. John J. Holmes
State Auditor of Ex-Officio
Insurance Commissioner
State Capitol
Helena, Montana

Dear Mr. Holmes:

You have requested my opinion asking if Chapter 114, Laws of 1943, repealed all or any part of Section 2737.1, Revised Codes of Montana, 1935.

Chapter 114, Laws of 1943, provides that "any building erected, or to be erected, to be used to accommodate public assemblies, including churches, schools, court houses, theaters, public halls, ballrooms, beer parlors, taverns, road houses, night clubs, or any other building of like characters, or any building owned or controlled by the State of Montana to be used as an office building, dormitory, school, or for penal or custodial purposes, or any other building of like character, shall have at least two separate exits or as many more as the fire marshal shall direct."

Chapter 114 specifies the size of all doors and states other safety requirements.

Section 2737.1, Revised Codes of Montana, 1935, as amended by Chapter 18, Laws of 1943, gives to the State Fire Marshal the power of:

"Overseeing the safety of and directing the means and adequacy of exit in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphi-theatres, hotels and rooming houses, and all other places where large numbers of persons work, sleep, live or congregate from time to time for any purpose."

In your letter you called attention to the fact that Chapter 114, Laws of 1943, does not cover hotels and rooming houses, while such are named in Section 2737.1, as amended, and you asked if the fire marshal may direct the means and adequacy of exit in regard to hotels and rooming houses.

The purpose of Chapter 114 is to protect the public and in particular to require doors of adequate size which open outwardly for all places where large groups of people congregate. Chapter 114 is more specific in its requirements than is Section 2737.1, as amended, but it does not cover hotels and rooming houses specifically.

Our Supreme Court in *State v. Tullock*, 72 Mont. 482, 234 Pac. 277, stated the following rules which are applicable here:

"It is the rule, of course, that where two provisions of an Act of the legislature are conflicting and cannot be harmonized, the last in order of arrangement controls . . . But where there is a statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized if possible."

The two acts define the power of the fire marshal in regard to exits. Section 2737.1, as amended, grants the authority to the fire marshal to investigate the adequacy of exits in case of fire in the enumerated buildings, while Chapter 114 specifies the type of doors to be used on enumerated buildings of public assemblage. Both acts might well apply in the investigation of the fire marshal of one building as Chapter 114 would specify the door and Section 2737.1, as amended, would give him power over the approach to the door as an adequate exit. However, the doors in the building enumerated in Chapter 114 must comply with its provisions.

It is therefore my opinion that the provisions of Chapter 114, Laws of 1943, must be enforced by the State Fire Marshal, but that Chapter 114 does not repeal Section 2737.1, Revised Codes of Montana, 1935, as amended, and that the latter section is a grant of supervisory powers to the State Fire Marshal concerning the adequacy of fire exits in the buildings enumerated in the section.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General