

**VOLUME NO. 35****Opinion No. 45**

**FIRE MARSHAL — Fire prevention rules, enforcement of; PUBLIC BUILDINGS — Fire prevention rules, enforcement of. Section 82-1202, R.C.M. 1947.**

**HELD: If public buildings do not comply with the fire safety rules and regulations promulgated by the state fire marshal bureau, those rules and regulations may be enforced by judicial action enjoining the use of buildings or portions of buildings until there is compliance with those rules.**

December 19, 1973

Mr. William A. Penttila  
Chief, Fire Marshal Bureau  
Department of Justice  
1437 Helena Avenue  
Helena, Montana 59601

Dear Mr. Penttila:

You have asked my opinion on the following question:

How can the Fire Marshal Bureau enforce regulations adopted by the state fire marshal when a state institution, unit of the state university system, or other state-owned building is maintained in violation of those regulations?

Section 82-1201, Revised Codes of Montana, 1947, states in pertinent part:

The state fire marshal shall:

- (1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.
- (2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommenda-

tions in regard to fire prevention, fire protection and to the public safety.

(3) **Inspect public, business, or industrial buildings and require conformance to law or rules** promulgated under the provisions of this act.

(4) **Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act** and may adopt necessary rules for safeguarding lives and property from the hazards of fire and explosion after consultation with the fire prevention advisory commission and approval by the commissioner of insurance. ... **If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.** (Emphasis supplied)

A public building is one belonging to, or used by, the public for the transaction of public or quasi-public business. **People v. Martinez**, 250 N.Y.S.2d 28 (New York, 1964). **In re Bacon**, 49 Cal. Rptr. 322 (Cal., 1966). According to this definition, the buildings to which you refer in your question are "public buildings". The buildings are all owned by the public and used by the public for the benefit of the public.

Subsection (4) of section 82-1202, supra, states that "[i]f fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is section 82-1202, supra, provide only for the state fire marshal to inspect certain public buildings and make recommendations concerning fire safety, it is clearly the fire marshal's **duty** under subsection (3) **to require conformance to fire safety rules and regulations** for all public buildings.

Subsection (4) of section 82-1202, supra, states if "[i]f fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules." If the public officers who administer public buildings refuse to conform to fire safety rules, they may be enjoined, by judicial action, from using that part of a building which does not conform to the rules and regulations.

**THEREFORE, IT IS MY OPINION:**

If public buildings do not comply with the fire safety rules and regulations promulgated by the state fire marshal bureau, those rules may be enforced by judicial action enjoining the use of such buildings, until there is compliance with those rules.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General