

VOLUME NO.38

OPINION NO.3

DEPARTMENT OF ADMINISTRATION - Extent of authority to enforce state building codes;

PUBLIC BUILDINGS - Definition of "public" for purposes of determining whether a place is a "public place" under section 69-2107;

REVISED CODES OF MONTANA, 1947 - Sections 69-2105, 69-2107, 69-2111, R.C.M. 1947.

- HELD: 1. State building codes may be enforced in public buildings regardless of location and in non-public buildings located within "municipalities and their jurisdictional area," as defined in section 69-2105(12).
2. Employees present in a building in the course of their employment are not "the public" for purposes of determining whether a building is a "public place" under section 69-2105(13).

8 January 1979

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Department of Administration
Legal and Insurance Division
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Dear Mr. Young:

You have requested my opinion regarding the extent of the Department of Administration's authority to inspect buildings and enforce the state building code. Your letter informs me that Montana Power Company has challenged the Department's authority to enforce the state elevator code at the power plants in Billings and Colstrip, contending that the building code applies only to "public places." My office has reviewed a letter from the Montana Grain Elevator Association expressing similar concerns regarding the inspection of grain elevators. These letters pose two questions:

1. May state building codes be enforced in a non-public building within a municipality and its jurisdictional area?
2. Does the presence of employees constitute occupation by the public for purposes of determining whether a building is a "public place" under section 69-2105(13)?

Section 69-2111 defines the authority of the Department to enact building codes, providing:

Section 69-2111. Adoption of rules by department.
(1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. *** The rules, when adopted as provided in this chapter, constitute the "state building code" and are acceptable for the buildings to which they are applicable. (Emphasis added.)

The Department has the power and duty under section 69-2109 to inspect buildings and issue orders "necessary to effectuate the purposes of [the] act."

The only modification of the inclusive language of section 69-2111 appears in section 69-2107(1), which provides in part:

69-2107(1). Applicable to public places outside municipalities ***. (1) Outside municipalities and their jurisdictional area as defined by section 69-2105(13) of this act, this act applies to "public places" as defined in section 69-2105, subsection (13).

Reading sections 69-2111 and 69-2107 together, it is apparent that the Legislature intended that the regulatory jurisdiction of the Department extend to all buildings, whether public or not, which are located within a municipality and its jurisdictional area. The general statutory language of section 69-2111 applies to "all buildings" without qualification. More significantly, the exception in section 69-2107 which limits the Department's jurisdiction in areas outside of municipalities implies that areas within a municipality are subject to the unlimited jurisdiction of the Department. See 2A Sutherland, Statutes and Statutory Construction, § 47.11 (9th ed. 1973), and cases there cited.

The extent of the "jurisdictional area" of a municipality is clear from the definition found in section 69-2105(12), which states:

"Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request

of the municipality. Upon request the council may approve extension of the jurisdictional area to include: (a) all or part of the area within 4 1/2 miles of the corporate limits of a municipality; (b) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limit of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, which is partially within 4 1/2 miles of the corporate limits of a municipality. ***

Reading this definition together with section 69-2107, it is apparent that non-public buildings are within the regulatory jurisdiction of the Department (1) when they are located within the corporate boundaries of a municipality; or (2) if their location has been included in the "municipal jurisdictional area" at the request of the municipality.

The answer to your second question depends upon the proper construction of the definition of "public places" set forth in section 69-2105(13). The statute defines a "public place" as "any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be." Although seemingly clear, the statute leaves room for construction since the term "public" is undefined. Your letter suggests that if employees are considered members of the public, then grain elevators and power plants are "public places," and therefore are subject to the state building code.

In my opinion, employees who are present in a structure in the course of their employment are not to be considered the "public" for purposes of determining whether the structure is a "public place" under section 69-2105(13). Any other construction would demean the plain and ordinary meaning of the words used by the Legislature, and would render the statutory distinction between public and private places a nullity. The popularly understood definition of "public," used in its noun form to describe a particular group of people, includes "[t]he people collectively, or in general" 2 Funk & Wagnalls New Standard Dictionary (1941) at 2003. See 36 Op. Att'y Gen. No. 52. An employee who occupies a structure in the course of his employment does not do so as a member of the "people collectively," nor do the "people collectively" have an inherent right to go everywhere an employee may go.

Further, any construction which equates an employee with the "public" would effectively read the definition of "public places" out of the act, since virtually all structures will at some point be occupied, however fleetingly, by persons working there. I therefore conclude that buildings which are occupied only by employees present in the course of their employment are not "public places" within the meaning of section 69-2105(13).

THEREFORE, IT IS MY OPINION:

1. State building codes may be enforced in public buildings regardless of location and in non-public buildings located within "municipalities and their jurisdictional area," as defined in section 69- 2105(12).
2. Employees present in a building in the course of their employment are not "the public" for purposes of determining whether a building is a "public place" under section 69-2105(13).

Very truly yours,

MIKE GREELY
Attorney General