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VOLUME NO. 45

OPINION NO. 3

ADMINISTRATIVE LAW AND PROCEDURE - Adoption of rules consistent with legislative goals;  
BUILDING CODES - State building codes: application to multiunit condominiums, rental cabins and extended motels, and lodging houses;  
BUILDING CODES - State building codes: exclusion of small residential facilities and day-care homes;  
COMMERCE, DEPARTMENT OF - Health and safety regulations: inclusion of state building codes;  
COMMERCE, DEPARTMENT OF - State building codes: application to multiunit condominiums, rental cabins and extended motels, and lodging houses;  
ADMINISTRATIVE RULES OF MONTANA - Sections 8.70.101, 8.70.105;  
MONTANA CODE ANNOTATED - Sections 50-60-102, 50-60-201, 50-60-203, 76-2-412.

- HELD: 1. MCA § 50-60-102(1) does not require the exclusion from state building code compliance of multiunit condominiums which utilize "area separation walls," rental cabins and extended motel units which contain cooking units, or lodging houses, including bed and breakfast establishments.
2. MCA § 76-2-412(3) excludes from state building code compliance community residential facilities serving eight or fewer persons or day-care homes serving twelve or fewer children.

April 8, 1993

Mr. Jon Noel  
Director  
Department of Commerce  
1424 Ninth Avenue  
Helena, MT 59620-0501

Dear Mr. Noel:

Your predecessor as director of the Department of Commerce requested my opinion on the following questions:

1. Does MCA § 50-60-102(1) prohibit the Building Codes Bureau of the Department of Commerce from enforcing the state building codes in the construction of:
  - a. condominiums or other such structures which contain five or more dwelling units but which utilize "area separation walls";
  - b. rental cabins and extended motels which contain cooking units;
  - c. lodging houses, including bed and breakfast establishments?
2. Does MCA § 76-2-412(3) prohibit the application of state building codes to community residential facilities serving eight or fewer persons or day-care homes serving twelve or fewer children?

MCA § 50-60-102, which defines the application of the state building codes, provides in part:

- (1) The state building codes do not apply to:
  - (a) residential buildings containing less than five dwelling units[.]

The Department of Commerce [hereinafter "Department"] has adopted by rule the Uniform Building Code [UBC] and the Uniform Mechanical Code [UMC]. Mont. Admin. R. 8.70.101 and 8.70.105. By applying certain definitions from the UBC to MCA § 50-60-102(1), the Department has determined that multiunit condominiums which utilize "area separation walls," rental cabins and extended motel units with cooking facilities, and lodging houses, including bed and breakfast establishments, are excluded from the coverage of the state building code by the broad language of MCA § 50-60-102. The request for an opinion has advised me that the Department based its decision on the belief that it is mandated by the broad exclusionary language of MCA § 50-60-102(1). The Department has asked my opinion whether that interpretation is correct.

While the adoption and application of UBC definitions and the resulting interpretation that such buildings are excluded from application of the state building code may be an appropriate discretionary determination pursuant to the authority contained in MCA § 50-60-102(4), I cannot agree that the language of MCA § 50-60-102(1) mandates the exclusion of these buildings.

The plain language of MCA § 50-60-102(1) excludes residential buildings containing less than five dwelling units. The Department, by referring to specific provisions of the UBC, has interpreted the phrase "residential buildings containing less than

five dwelling units" to mean a building containing five or more condominium units which utilize "area separation walls," rental cabins and motel units which contain cooking facilities, and lodging houses.

Under UBC § 505, "area separation walls" permit each portion of a building separated by one or more such walls to be considered a separate building. "Dwelling unit," as defined in UBC § 405, is any building or portion thereof which contains living facilities, including the provisions for sleeping, eating, cooking and sanitation, for not more than one family. A "lodging house" is defined as any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise. UBC § 413. By using these definitions adopted from the UBC to construe state law, the Department has concluded that MCA § 50-60-102(1) prohibits the Department from applying the state building codes to these structures.

I conclude that, although the Department's own rules adopting these UBC definitions lead to this interpretation, MCA § 50-60-102, when read in its entirety, does not by itself require such a restrictive interpretation. When the Legislature established the state building construction standards, it pronounced:

It is essential that building codes be adopted and enforced to protect the health and safety of the residents of this state[.]

1969 Mont. Laws, ch. 366, § 4. Additionally, the appropriate state agency is to administer the act so as to "effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings." See 1969 Mont. Laws, ch. 366, § 6.

In order to determine the proper scope of the exclusionary language found in MCA § 50-60-102(1) it is necessary to read the statute as a whole. Sutherland Statutory Construction § 46.05 (5th ed. 1992). Subsection (4) of MCA § 50-60-102 provides:

The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable[.]

This broad discretionary authority was granted to the Department to carry out the legislative goals enunciated in MCA § 50-60-201.

Prior to amendment in 1981 of MCA § 50-60-102 the state building codes applied only to buildings which were considered public places. Some confusion arose over whether apartment buildings

should be considered public places. The Department of Administration, which enforced the state building codes at that time, sought legislative reform to clarify the definition of "public places." That reform resulted in the present language of MCA § 50-60-102.

The request for an opinion indicates that the Department's present interpretation of MCA § 50-60-102, which derives from application of the UBC definitions, can produce absurd enforcement situations and/or dangerous circumstances. For example, motel cabins which normally fall within the enforcement provisions of the state building code are exempted from enforcement when they are equipped with cooking facilities. Although this circumstance should call for greater regulation, these motel units are excluded from regulation altogether under the Department's current interpretation.

Nothing in the plain language of MCA § 50-60-102 or its legislative history requires adoption of a construction which leads to absurd results. There may be a number of reasonable interpretations, one of which is that the Legislature intended by the enactment of MCA § 50-60-102(1) to exempt from building code compliance only those buildings intended for noncommercial purposes. If, in the Department's opinion, a restrictive reading of MCA § 50-60-102(1) does not further the legislative goals but effectively advances the very evils sought to be remedied by the building construction standards, then such an interpretation should be avoided. See Sutherland Statutory Construction § 65.03 (5th ed. 1992). The fact that one of several alternative interpretations produces unreasonable results is sufficient basis for rejecting that alternative. Johnson v. Marias River Elec. Coop., Inc., 211 Mont. 518, 524, 687 P.2d 668, 671 (1984); Sutherland Statutory Construction § 45.12 (5th ed. 1992). The Department may thus adopt other definitions by its rulemaking authority which would more reasonably satisfy and promote the purposes of the state building codes. See also MCA § 50-60-203 (authority of Department to make rules, to adopt nationally recognized building codes, such as UBC, in whole or in part and to adopt rules more stringent than those in the UBC).

Therefore, I believe the Department is not bound by the language of MCA § 50-60-102 to exclude such buildings from code compliance. The Department could, by rulemaking, clarify that its adoption of certain UBC provisions does not exclude application of the state building code to these structures.

The second question posed by the Department's opinion request concerns the proper interpretation of MCA § 76-2-412(3) which provides in relevant part:

Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision

thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

The Department has concluded that because the state building codes do not apply to residential buildings containing less than five dwelling units under MCA § 50-60-102(1) they are not applicable to small community residential and day-care facilities.

In 1974, the Legislature enacted House Bill 686 which supplied the pertinent exclusionary language in MCA § 76-2-412(3). The legislative history discloses that the imposition of health and safety regulations on smaller home-care facilities was inconsistent with the intent to retain an atmosphere of traditional family homes. The statute was amended in 1974 with the clear purpose of having these facilities treated simply as residential occupancies and excluding them from all safety or sanitary regulations which did not apply to residential occupancies. The statutory language is clear in expressly exempting these facilities from health and safety regulations, which include state building codes. Thus, any attempt to apply the state building codes to such facilities would be contrary to the plain language of the statute.

Based on the clear language of the statute, I conclude that the Legislature intended by this enactment to exclude smaller home-care and day-care facilities from compliance with all state building regulations which are not applicable to residential occupancies.

THEREFORE, IT IS MY OPINION:

1. MCA § 50-60-102(1) does not require the exclusion from state building code compliance of multiunit condominiums which utilize "area separation walls," rental cabins and extended motel units which contain cooking units, or lodging houses, including bed and breakfast establishments.
2. MCA 76-2-412(3) excludes from state building code compliance community residential facilities serving eight or fewer persons or day-care homes serving twelve or fewer children.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/cwc/dh