May 20, 1994

OPINION NO. 94-030

Gerald O. Holland, Chairman
Board of Building Standards
2323 West Fifth Avenue
P.O. Box 825
Columbus, Ohio 43216

Dear Chairman Holland:

You have requested an opinion regarding the inspection of fuel gas piping installations by local boards of health and health departments. By way of background, you state:

> The Ohio Revised Code and provisions of the Ohio Basic Building Code[1] indicate that the local building departments (authorized by certification through the Board of Building Standards) are responsible for enforcement of the Mechanical Code....[2] §M-800.1 of this Code includes, within its scope, fuel gas piping system installations, repair and maintenance (with certain limitations).
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> The responsibility seems clear but practical application of inspections and enforcement is complicated for many building departments because gas piping is installed by the plumbing trade at the same time water supply and sanitary piping is installed. Most local building departments do not maintain, on staff, personnel certified to enforce the plumbing code (see §4101:2-1-45{F}). They generally use the county or local Boards of Health for inspections pertaining to plumbing.
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> Since inspections of installations relating to the Mechanical Code must be performed by building department personnel holding class III or HVAC certificates of competency (see §4101:2-1-45{E}), the building departments are finding themselves required to send two different inspectors to a site after the plumbers have completed the rough-in work and again upon completion. Further, chief building officials

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[1] "Chapters 4101:2-1 to 4101:2-54 of the Administrative Code shall be collectively known as the _Ohio Basic Building Code,_ for which the designation _OBBC_ may be substituted." 10 Ohio Admin. Code 4101:2-1-01.

[2] "Chapters 4101:2-33 to 4101:2-50 of the Administrative Code shall be collectively known as the _Mechanical Code_ of the _Ohio Basic Building Code_ in accordance with rule 4101:2-1-03 of the Administrative Code." 10 Ohio Admin. Code 4101:2-33-01(A).

> would prefer to have personnel most familiar with the trade involved evaluating compliance to the approved drawings.
> This situation could be significantly improved if Boards of Health had class III or HVAC certified personnel on staff and they were allowed to provide inspection service, under contract, to a certified building department. (Footnotes added.)

In light of this background, you wish to know whether a local health department or board of health may enter into a contract with a certified building department whereby employees of the health department or board of health perform inspections pertaining to fuel gas piping installations on behalf of the building department.

Certified Building Departments

Pursuant to R.C. 3781.10(E), the Board of Building Standards is required to certify municipal, township, and county building departments, and certify personnel of municipal, township, and county building departments, and persons and employees of persons, firms, or corporations as described in R.C. 3781.10(E)(2)[3] to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections pursuant to R.C. 3781.03 and R.C. 3791.04. *See* 10 Ohio Admin. Code 4101:2-1-31(A); 10 Ohio Admin. Code 4101:2-1-44(A); *see also* 10 Ohio Admin. Code 4101:2-1-16(A) (requiring building officials to enforce the provisions of the Ohio Basic Building Code). R.C. 3781.03 authorizes the building inspector or commissioner of buildings in municipal corporation, township, and county building departments that have been certified by the Board of Building Standards under R.C. 3781.10 to "enforce all the provisions in such chapters and any regulations adopted pursuant thereto relating to construction, arrangement, and the erection of all buildings or parts thereof, as defined in section 3781.06 of the Revised Code, including the sanitary condition of the same in relation to heating and ventilation." R.C. 3791.04 requires plans and specifications prepared for the construction, erection, or manufacture of any building to which R.C. 3781.06 is applicable to be submitted to the certified municipal, township, or county building department having jurisdiction for approval.

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[3] R.C. 3781.10(E)(2) provides in pertinent part:

> Enforcement authority for inspections may be exercised, and inspections may be made, on behalf of a municipal corporation, township, or county, by any of the following who are certified by the board of building standards:
> (a) Officers or employees of the municipal corporation, township, or county;
> (b) Persons, or employees of persons, firms, or corporations, when such persons, firms, or corporations are under contract to furnish inspection services to the municipal corporation, township, or county, and such authority is exercised pursuant to such contract;
> (c) Officers or employees of any other municipal corporation, township, county health district, or other political subdivision under contract to furnish inspection services to the municipal corporation, township, or county, when such authority is exercised pursuant to such contract.

In addition, every certified municipal corporation, township, or county building department must have an individual holding a class III building inspector certificate or Class V certification as a mechanical inspector (formerly a HVAC certificate of competency, *see* [1993-1994 Monthly Record] Ohio Admin. Code 4101:2-1-78(A)(5) at 921) perform inspections pertaining to fuel gas piping systems. *See* 10 Ohio Admin. Code 4101:2-1-45(E). Provisions relating to fuel gas piping systems are set forth in the Ohio Basic Building Code at 10 Ohio Admin. Code 4101:2-39.

Because a certified building department must enforce the provisions of the Ohio Basic Building Code, rule 4101:2-1-16(A), perform inspections pursuant to R.C. 3781.03 and R.C. 3791.04, R.C. 3781.10(E), and employ or have under contract individuals certified to perform inspections pertaining to fuel gas piping systems, rule 4101:2-1-45(E), a certified building department is responsible for performing inspections pertaining to fuel gas piping installations. Resolution of your specific question therefore turns on whether a certified building department is authorized to delegate or contract its duty to perform inspections pertaining to fuel gas piping installations to a local board of health or health department.

Authority of a Certified Building Department to Delegate Its Duty to Perform Inspections Pertaining to Fuel Gas Piping Installations

It is a general rule that "the authority of a public body to delegate official duties to another entity, whether public or private, is limited, and, in the absence of specific statutory authority therefor, may only be exercised with respect to purely ministerial duties." 1987 Op. Att'y Gen. No. 87-083 at 2-558 n.1; *accord* 1987 Op. Att'y Gen. No. 87-034 at 2-237; 1979 Op. Att'y Gen. No. 79-067 at 2-223. The rule is based on the presumption "that the General Assembly has delegated duties to a public body or agency named in a statute because that body or agency _is deemed competent to exercise the judgment and discretion necessary for performance of the duties._" Op. No. 87-083 at 2-559 n.1 (quoting Op. No. 79-067 at 2-223); *accord* Op. No. 87-034 at 2-237.

As stated above, certified building departments are delegated responsibility for the enforcement of the provisions of the Ohio Basic Building Code. In enforcing the provisions of the Ohio Basic Building Code, certified building departments are required to determine whether work which has been performed is in conformity with the provisions of the Ohio Basic Building Code. This determination requires that the work be inspected, and that the inspector find the work in conformity with the applicable provisions of the Ohio Basic Building Code. A finding that work is or is not in compliance with the provisions of the Ohio Basic Building Code clearly requires an inspector to exercise his judgment and discretion. It is thus apparent that a certified building department's responsibilities in regard to performing inspections pertaining to fuel gas piping installations are not ministerial in nature, but rather involve the exercise of judgment and discretion. Accordingly, absent statutory authority to the contrary, a certified building department's duty to perform inspections pertaining to fuel gas piping installations may not be delegated to a local board of health or health department.

A review of R.C. 3781.10(E)(2) and related administrative code provisions indicates that any

municipal corporation, township, county, health district, or other political subdivision may enter into a contract to furnish inspection services to a certified municipal corporation, township, or county building department. R.C. 3781.10(E)(2) provides, in part:

> Enforcement authority for inspections may be exercised, and inspections may be made, on behalf of a municipal corporation, township, or county, by any of the following who are certified by the board of building standards:
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> ....
>
> (c) Officers or employees of any other municipal corporation, township, county, health district, or other political subdivision under contract to furnish inspection services to the municipal corporation, township, or county, when such authority is exercised pursuant to such contract.

In addition, rule 4101:2-1-45(E) requires a building department to

> have in its employ or under contract at least one person designated as building inspector. Any person who determines compliance with approved plans to the extent necessary for enforcement of OBBC shall hold a certification as a field inspector or a class III certificate of competency. The department may also have in its employ or under contract persons holding a class V certificate of competency to determine compliance with the approved plans for heating, ventilating and air conditioning (HVAC) systems to the extent necessary for the enforcement of OBBC.

Thus, R.C. 3781.10(E)(2) and rule 4101:2-1-45(E) authorize a certified building department to contract its duty to perform inspections pertaining to fuel gas piping installations to another governmental entity.

Powers of Local Boards of Health and Health Departments

However, it is well established in Ohio that boards of health and health departments have only those powers expressly granted by statute and such powers as are necessarily implied thereby. *Browning-Ferris Indus. of Ohio, Inc. v. Mahoning County Bd. of Health*, 69 Ohio App. 3d 96, 590 N.E.2d 61 (Franklin County 1990), *appeal dismissed mem.*, 60 Ohio St. 3d 704, 573 N.E.2d 122 (1991); *Stubbs v. Mitchell*, 65 Ohio Law Abs. 204, 114 N.E.2d 158 (Franklin County 1952), *appeal dismissed*, 158 Ohio St. 245, 108 N.E.2d 281 (1952); 1992 Op. Att'y Gen. No. 92-043 at 2-168 and 2-169; *see Wetterer v. Hamilton County Bd. of Health*, 167 Ohio St. 127, 146 N.E.2d 846 (1957); *Brunner v. Rhodes*, 95 Ohio App. 259, 119 N.E.2d 105 (Franklin County 1953). Accordingly, a board of health or health department may enter into a contract with a certified building department to perform inspections pertaining to fuel gas piping installations if it is granted that authority, either expressly or impliedly, by statute.

R.C. 3709.01 divides the State of Ohio into city health districts and general health districts. *See also* R.C. 3709.051 ("[t]wo or more contiguous city health districts may be united to form a single city health district"); R.C. 3709.07 and R.C. 3709.071 (providing for the creation of a

combined general health district); R.C. 3709.10 (providing for the combining of two or more general health districts into a single general health district). Except when an administration of public health different from that specifically provided in R.C. 3709.05 is established and maintained under a municipal charter, each city and general health district is governed by a board of health. R.C. 3709.02; R.C. 3709.05.

Health departments are established by counties pursuant to R.C. 301.24 and R.C. 302.13. A county health department exercises all the powers and performs all the duties which are vested in or imposed upon the authorities of a general health district.[4] R.C. 301.24; R.C. 302.13. Thus, the powers and duties of a health department are the same as those of a board of health.

In general, boards of health and health departments have general authority to protect the public health. In that regard, a board of health or health department is empowered to abate and remove all nuisances within its jurisdiction, R.C. 3707.01, impose a quarantine on vessels, railroads, or other public or private vehicles conveying persons, baggage, or freight, or used for such purpose, R.C. 3707.04, inspect the sanitary condition of all schools and school buildings within its jurisdiction, R.C. 3707.26, provide vaccinations, R.C. 3707.27, provide infant welfare stations, prenatal clinics, and other measures for the protection of children as are necessary, R.C. 3709.18, make such orders and regulations as are necessary for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances, R.C. 3709.20; R.C. 3709.21, provide for the free treatment of cases of gonorrhea, syphilis, and chancroid, R.C. 3709.24, and provide for the free distribution of antitoxin for the treatment of cases of diphtheria, R.C. 3709.25.

In addition, a board of health or health department may inspect plumbing in particular types of buildings within its jurisdiction. *See* R.C. 3703.01; R.C. 3707.01; Op. No. 92-043. The term "plumbing" is not defined in the Revised Code. The term "plumbing" is, however, defined for purposes of 10 Ohio Admin. Code Chapter 4101:2-51 (state plumbing code) as follows:

> "Plumbing" includes the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following: drainage systems, the venting systems and the water-supply systems within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of the storm-water, liquid-waste, or drainage and water-supply systems of any premises. "Plumbing" does not include the installation, alteration, repair or maintenance of fire suppression systems and their related appurtenances, or standpipes when connected to fire suppression systems, or ground or overhead water supply beginning at the point where the water is used or intended for use exclusively for fire protection purposes.

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[4] A health department established pursuant to R.C. 301.24 may also exercise the powers and perform the duties which are vested in or imposed upon the authorities of a city health district.

10 Ohio Admin. Code 4101:2-51-01; *accord* 7 Ohio Admin. Code 3701-37-01(G) (defining, for purposes of 7 Ohio Admin. Code Chapter 3701-37 (Plumbing Inspectors), the term "plumbing" in substantially the same manner).

In light of the above, it is apparent that the term "plumbing" denotes the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any drainage system, venting system or water-supply system. Because terms that have acquired a technical meaning are to be construed accordingly, R.C. 1.42, the term "plumbing" does not encompass an activity that is unrelated to the installation, repair, or maintenance of a drainage system, venting system, or water-supply system.

As indicated in your letter requesting an opinion, the gas piping inspections with which you are concerned relate to fuel gas piping systems. It is quite clear that the conveyance of fuel gas through piping is not an activity that relates to the installation, repair, or maintenance of a drainage system, venting system, or water-supply system. Consequently, the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any fuel gas piping system does not constitute "plumbing." Since "plumbing" does not include the installation, maintenance, extension, and alteration of fuel gas piping systems, neither a board of health or health department in discharging its duties with respect to the inspection of plumbing is authorized to perform inspections pertaining to fuel gas piping installations.

No statute in the Revised Code thus expressly authorizes a board of health or health department to perform inspections pertaining to fuel gas piping installations. Moreover, none of the statutorily imposed duties of a board of health or health department relates to the inspection of fuel gas piping installations. A board of health or health department, therefore, does not have implied power to perform that type of inspection. Because neither a board of health nor health department has been conferred the power to perform inspections pertaining to fuel gas piping installations, a board of health or health department is not authorized to enter into a contract with a certified building department to perform such inspections for the building department.

This conclusion is further supported by the language of R.C. 3781.10(E). This section provides in relevant part:

> [R.C. 3781.10(E)] does not require or *authorize* the certification by the board of personnel of municipal, township, and county building departments, and persons and employees of persons, firms, or corporations as described in divisions (E)(1) and (2) of this section, *whose responsibilities do not include the* exercise of enforcement authority, the approval of plans and specifications, or the *making of inspections, under the Ohio building code*. (Emphasis added.)

As indicated above, no statute in the Revised Code authorizes a board of health or health department to perform inspections pertaining to fuel gas piping installations. In addition, no provision of the Ohio Basic Building Code imposes upon a local board of health or health department the

responsibility of conducting inspections of fuel gas piping systems. Because boards of health and health departments are not authorized to perform inspections pertaining to fuel gas piping systems, the Board of Building Standards is not authorized to certify officers or employees of boards of health and health departments to make inspections pertaining to fuel gas piping installations. Without certification, officers and employees of local boards of health and health departments may not perform any inspections of fuel gas piping systems. It follows, therefore, that a board of health or health department may not enter into a contract with a certified building department whereby employees of the board of health or health department are to perform inspections of fuel gas piping installations for the building department.

Conclusion

It is, therefore, my opinion, and you are hereby advised that, neither a board of health nor health department may enter into a contract with a certified building department to perform inspections pertaining to fuel gas piping installations on behalf of the building department.

Respectfully,

LEE FISHER
Attorney General

May 20, 1994

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SYLLABUS: 94-030

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