

OPINION NO. 69-087**Syllabus:**

1. The Board of Building Standards may not certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04, Ohio Revised Code, if said building department contracts with private agencies to perform such work.

2. The Board of Building Standards may not certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04, Ohio Revised Code, if said building department contracts with another certified building department to perform such work.

3. Building departments certified by the Board of Building Standards may charge in excess of the fees prescribed for the inspection of plans in Section 3791.07, Ohio Revised Code.

To: William O. Walker, Director, Dept. Industrial Relations, Columbus, Ohio
By: Paul W. Brown, Attorney General, July 25, 1969

I have before me your request for an opinion on the following questions:

"1. May the Board of Building Standards certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04 of the Ohio Revised Code, if said building department contracts with private agencies to perform such work?"

"2. May the Board of Building Standards certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04 of the Ohio Revised Code, if said building department contracts with another certified building department to perform such work?"

"3. May a certified building department charge in excess of the fees prescribed in the Ohio Revised Code 3791.07 for the inspection of plans?"

Section 3781.10 (E), Revised Code, reads as follows:

"The board of building standards shall:

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"(E) Certify municipal and county building departments to exercise enforcement authority and to accept and approve plans pursuant to sections 3781.03 and 3791.04 of the Revised Code. Said municipal and county building departments shall have jurisdiction within the meaning of said sections only with respect to the types of buildings and subject matters as to which they have been certified under this section and as to which such certification remains in effect. Such certification shall be upon application by the municipal corporation or by the board of county commissioners and approval of such application by the board of building standards. Such application shall set forth the types of building occupancies as to which the certification is requested, the number and qualifications of the staff composing the building department, and the proposed budget for the operation of such department. Such certification may be revoked or suspended with respect to any or all of the building occupancies to which it relates on petition to the board of building standards by any person affected by such enforcement or approval of plans, or by said board on its own motion. Hearings shall be held and appeals permitted on any such proceedings for certification or for revocation or suspension of certification in the same manner as provided in section 3781.101 [3781.10.1] of the Revised Code for other proceedings of the board of building standards. Upon certification, and until such authority is revoked, county building departments shall enforce such regulations over those occupancies listed in the application without regard to limitation upon the authority of boards of county commissioners under Chapter 307. of the Revised Code;"

Your first question is, may the Board of Building Standards certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04 of the Ohio Revised Code, if said building department contracts with private agencies to do such work.

Section 3781.03, Revised Code, reads in pertinent part as follows:

"The chief of the division of factory and building inspection, and building in-

spector or commissioner of buildings in municipal corporations whose building departments have been certified by the board of building standards under section 3781.10 of the Revised Code and, in the unincorporated territory of counties, the building inspector or commissioner of buildings in counties whose building departments have been certified by the board of building standards under section 3781.10 of the Revised Code, shall 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 relations to heating and ventilation."

Section 3791.04, Revised Code, reads in pertinent part as follows:

"Before entering into contract for or beginning the construction or erection of any building to which section 3781.06 of the Revised Code is applicable, the owner thereof shall, in addition to any other submission of plans or drawings, specifications, and data required by law, submit the plans or drawings, specifications, and data prepared for the construction, erection, and equipment thereof, or the alteration thereof or addition thereto to the municipal or county building department having jurisdiction, and if there is no municipal or county building department, to the chief of the division of workshops and factories, for his approval. No owner shall proceed with the construction, erection, alteration, or equipment of any such building until said plans or drawings, specifications, and data have been so approved. No plans or specifications shall be approved unless the building represented thereby would, if constructed, repaired, or equipped according to the same, comply with Chapters 3781. and 3791. of the Revised Code and any rule or regulation made under such chapters."

It is noteworthy that the Board of Building Standards itself has not been given authority to certify a private agency to perform any of the board's functions. The board's certification powers relate only to municipal and county building departments.

Section 3781.10 (E) of the Ohio Revised Code, which delineates the powers and duties of the board in regard to certification of building departments does not mention contracting with private agencies to do the work of certified boards. There is no indication that

any method of operation was contemplated other than that each certified board would approve plans and exercise enforcement authority by and for itself, using the board's own staff.

If each board were not expected to do its own work, there would be little reason for Section 3781.10 (E), Revised Code, to require (as it does) that each application for certification by a board set forth the number and qualifications of the staff composing the building department.

It is said in Crawford on Statutory Construction, Section 245, at page 478:

"Legislative grants - whether they be of property, rights, or privileges, or to municipal or private corporations, or individuals - must be strictly construed against the grantee and in favor of the grantor - the government or the public. Where there is any doubt, it must be resolved in favor of the public. Nothing, therefore, will pass by virtue of the grant except what is given in clear and explicit terms."

There is nothing in the language of Section 3781.10 (E), Revised Code, to indicate that the legislature intended the board's certification power to apply to boards who contracted with private agencies to perform their work. The legislature could have specifically given the board certification power for building departments which contracted with private agencies to perform some or all of the work; yet, the legislature did not give the board such powers. I conclude, therefore, that the legislature did not intend that Board of Building Standards have the power to certify municipal or county building departments if the local departments contract private agencies to perform the department's work.

Accordingly, it is my opinion that the Board of Building Standards may not certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Sections 3781.03 and 3791.04, Ohio Revised Code, if said building department contracts with private agencies to perform such work.

Your second question is very similar to the first question in that both concern the power of the Board of Building Standards to certify local boards which do not perform their own work. The first question involved contracting with private agencies. The second question is, may the Board of Building Standards certify local building departments if these departments contract with another certified building department to perform the work.

Section 3781.01 (E), supra, treats certification of departments which contract with other certified departments the same as it treats certification of departments which contract with private agencies. Certification of departments which contract with other certified departments is not mentioned in Section 3781.10 (E), supra.

There is no indication of a legislative intent that the Board of Building Standards should have the power to certify a building department which contracted with another department.

The second sentence of Section 3781.10 (E), supra, expressly states that certified departments shall have jurisdiction only with respect to the types of buildings and subject matter to which they have been certified. Contracting with other departments is a matter for which no county or municipal board is certified since the Board of Building Standards has not been given the authority to certify departments to contract with other departments.

Accordingly, it is my opinion that the Board of Building Standards may not certify a municipal or county building department to exercise enforcement authority and approve plans pursuant to Section 3781.03, supra, and Section 3791.04, Revised Code, if said building department contracts with another certified building department to perform such work.

Your final question is, may a certified building department charge in excess of the fees prescribed in Section 3791.07, Revised Code, for the inspection of plans.

Section 3791.04, Revised Code, provides in pertinent part:

"Before entering into contract for or beginning the construction or erection of any building . . . the owner thereof shall . . . submit the plans or drawings . . . to the municipal or county building department having jurisdiction, and if there is no municipal or county building department, to the chief of the division of workshops and factories, for his approval."

Section 3791.07, Revised Code, however, speaks of:

"The fee for the inspection of plans required to be submitted to the division of workshops and factories for approval . . ."

(Emphasis added.)

It is apparent from a reading of Section 3791.04, Revised Code, that no plans are required to be submitted to the division of workshops and factories unless there exists no municipal or county building department having jurisdiction. Section 3791.07, Revised Code, however, speaks only in terms of fees for the inspection of ". . . plans required to be submitted to the division of workshops and factories." Accordingly, certified local building departments are not restricted as to fee schedules by Section 3791.07, Revised Code.