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STATE OF MAINE

Inter-Departmental Memorandum Date January 23, 1976

To Asa A. Gordon, Deputy Commissioner

Dept. Educational & Cultural Services

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Fire Service Training

The following responds to your memorandum of October 29, 1975, in which you ask several questions relating to fire protection codes. The questions and our answers are set forth below.

- "1. Under the present Maine statutes, who has jurisdiction in insuring that National Fire Protection Association codes are enforced?"

It is our understanding that the National Fire Protection Association (NFPA) has drafted several advisory codes and standards on various fire protection topics. Some of these codes and standards have been incorporated by reference or referred to in State statutes. 25 M.R.S.A. §§ 2396,6; 2445; and 2463. Some codes and standards also may have been incorporated in rules and regulations promulgated by the Commissioner of Public Safety in certain specified subject areas. 25 M.R.S.A. § 2396. In addition, some of these codes and standards may have been adopted by individual municipalities as general police power ordinances. 30 M.R.S.A. §§ 2151,1 and 2156. Therefore, it is possible that there could be some variation as to which of the NFPA codes and standards are to be enforced in the individual municipalities or other areas. [See Inhabitants of Town of Skowhegan v. Heselton, 102 A. 772 (1917), for an example of concurrent operation of State and municipal fire protection provisions.]

The answer to the question would depend, therefore, on the specific NFPA codes being considered. The State Fire Marshal and his staff have the jurisdiction and the duty to enforce those NFPA codes which have been incorporated in the statutes or the rules and regulations promulgated by the Commissioner of Public Safety. 25 M.R.S.A. § 2396. The municipal inspector of buildings or fire inspector would have the authority and jurisdiction to enforce those NFPA codes which have been adopted as general police power ordinances by the individual municipalities. The duties of the municipal fire inspectors, who would be the fire chiefs in municipalities having organized fire departments, also include those duties listed in 25 M.R.S.A. §§ 2392 to 2395. 25 M.R.S.A. § 2391. However, this would not extend to enforcement of NFPA codes adopted by the Commissioner of Public Safety pursuant to 25 M.R.S.A. § 2396, unless they had also been adopted by the municipalities. The limitation just stated would not prevent municipal fire officials from using codes adopted by the Commissioner for the purpose of guidance and information. However, actual enforcement responsibilities would still depend upon the specific code in question.

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"2. Does a local fire chief have the authority to enforce the codes in his municipality?"

In light of the answer to question number 1, a local fire chief would have authority to enforce those NFPA codes and standards which have been adopted as general police power ordinances by the municipality. A local fire chief could help the State Fire Marshal to see that other codes adopted by the State are being observed, though technically the State Fire Marshal would be responsible for their enforcement.

"3. Does an individual municipality have the right to accept or reject the Life Safety Code which is adopted by the State?"

It was indicated in answer to question number 1 that municipalities have the authority to adopt some or all of the NFPA codes, including the Life Safety Code, as general police power ordinances. 30 M.R.S.A. §§ 2151,1 and 2156. The municipal fire officials and code enforcement officers would have authority to enforce such codes if so adopted. The municipality may not wish to adopt a NFPA code adopted by the State. However, this would not be a "rejection" of such code because the State Fire Marshal would still be empowered to enforce the code within the municipality if the code has been adopted at the State level. 25 M.R.S.A. § 2396.

It should be noted that the NFPA pamphlet No. 101, Life Safety Code, has not been adopted by statute, in the sense of the substantive provisions of the Code. Title 25 M.R.S.A. § 2396,6, refers to the Life Safety Code, but only for the purpose of defining the scope of the State Fire Marshal's enforcement duties. However, it is clear that the Commissioner of Public Safety may adopt the substantive provisions of the Code by rule or regulation, if he has not done so already.

S. KIRK STUDSTRUP
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