



ATTORNEY GENERAL OPINIONS
OP – 6311
OCTOBER 27, 1989

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Ronald D. Wiscarson, Chief Deputy
State Fire Marshal
3000 Market Street Plaza, Suite 534
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Re: Opinion Request OP-6311

Dear Mr., Wiscarson:

You inform us that considerable confusion exists about certain fire service requirements and proposed alternatives. Specifically, you direct our attention to the 1988 Uniform Fire Code, section 10.207 and 10.301 (c), and state that if those provisions were adopted in Oregon, Oregon's fire code would contain requirements for both road access and water supply for new construction. You ask two questions.

1. Does ORS Chapter 476 grant either the State Fire Marshal or an exempt local jurisdiction authority to adopt or apply road access or water supply requirements to new construction?

The State Fire Marshal may adopt such requirements in exercising his power to adopt standards relating to fire prevention. The ability of local governments to adopt such requirements will depend upon their respective authorities, but, if authorized, they too may adopt such requirements.

2. If that authority exists, may the state Fire Marshal or an exempt local jurisdiction accept an alternative method or material such as a sprinkler system?

Where the alternative would require certain methods of building construction, as, for example would a sprinkler system, the answer is no. The state structural code sets the uniform standards for buildings.

Discussion

1. Adoption and Application of Road Access and Water Supply Requirements
 - a. State Fire Marshal Authority

The 1988 Uniform Fire Code (UFC) provisions to which you refer govern fire apparatus access roads (section 10.207 (a) - (1)) and the installation and maintenance of water supply systems (section 10.301). We previously considered whether the State Fire Marshal (or an exempt local jurisdiction) had authority to set standards for fire

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apparatus access roads, and concluded that they did not. See Letter of Advice dated March 27, 1984, to Harry Barnett, Manager, Fire Prevention/Investigation Section, Office of State Fire Marshal (OP-5636). We reasoned that ORS 476.030(1)(C), which refers to the "adequacy of exit in case of fire," was the only provision that arguably authorized fire apparatus access roads.¹ We rejected that provision on a basis for rulemaking, concluding that its reference to "exits" refers to building exits, not fire apparatus access. In 1986, possibly in response to our opinion, the State Fire Marshal amended his rules and eliminated section 10.207 from the state fire code. See OAR 837-40-010.²

In OP-5636, supra, we did not discuss two other colorable sources of authority relevant to your questions: ORS 476.030(1)(a) and (d). Subsection (d) permits the State Fire Marshal to adopt rules establishing "[s]tandards for equipment used for fire protection purposes." "Fire protection equipment" means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities. ORS 476.0005(s). This subsection is not broad enough to encompass fire apparatus access roads. It also does not cover water supply requirements, which are not fire apparatus, machinery or appliances.³

However, subsection (a) of ORS 476.030(1) permits the State Fire Marshal to adopt rules relating to the "prevention of fires." The commonly accepted meaning of "fire prevention" includes "measures and practices directed toward the prevention and suppression of destructive fires." Webster's Third New International Dictionary 855 (unabridged ed 1976) (emphasis added). See also B. Kuvshinoff, Fire Sciences Dictionary 165 (1977) (defining fire prevention to include minimizing life and property loss if fire should occur). But cf. ORS 478.920(1) (fire prevention code adopted by a rural fire prevention district may provide reasonable regulations related to "[p]revention and suppression of fires" (emphasis added)).

Fire access roads and water supply systems provide fire prevention in the broad sense of fire containment and fire suppression. Therefore, we conclude that the State Fire Marshal may adopt road access and water supply requirements under his authority to adopt rules for the purpose of fire prevention. To the extent that the advice given in this letter differs from that in OP-5636, this advice controls.

a. Exempt Local Jurisdiction

The State Fire Marshal may relinquish certain responsibilities to local governments if specified conditions are met. ORS 476.030(4) provides, in relevant parts:

"If, in the opinion of the State Fire Marshal, a governmental subdivision of the state has enacted adequate regulations generally conforming to state and national standards concerning fire prevention * * * and if the governmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal, after full consideration of the recommendations of the Fire Standards and Accreditation Board, may exempt the area subject to such regulation either partially or fully from the statutes, rules and regulations administered by the State Fire Marshal.

The authority to enact local ordinances or regulations derives separately from local government powers. As we noted in OP-5636, a city or county may incorporate fire safety standards in approving plats of subdivisions. OP-5636, supra, at 5 (citing ORS 92.044(1)(a)(B)). Thus, items such as fire apparatus access roads and water supply installations for new development may be addressed by city or county ordinances.

2. Alternative Methods or Materials

Because we find authority to adopt standards for fire apparatus access roads and water supply systems, we turn to your second question. That question arises because a specific jurisdiction authorizes an "alternative" method of fire protection where the standards cannot be met. For example, a certain city requires cul-de-sacs not exceed a specified length. In order to develop property on a cul-de-sac exceeding such length, the city requires that the houses built beyond the length limitation contain sprinkler systems.

Such an "alternative" relates to the same matters as the state building code. The state building code, which does not require sprinkler systems in such construction, supersedes and is controlling. See generally Letter of Advice dated December 23, 1988, to Dab Smith, Building Codes Administrator (OP-6287).

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Under Oregon law, the Building Codes Administrator, with the approval of the appropriate advisory boards, is authorized to promulgate codes governing construction, alterations and repair of buildings and other structures. ORS 455.020(1). These codes are designed to establish uniform performance standards for the health, safety, welfare, and comfort and security of building occupants and users. Id. As we previously said:

“As the terms are commonly used, ‘safety and welfare’ would. Among other things, necessitate that buildings be constructed to be relatively safe from fire and designed so that, in the event of a fire, a person could escape the building.”

Letter of Advice dated December 10, 2985, to Ron Clark, Building Codes Administrator (OP-5874), at 3-4. Moreover, state building codes must provide standards for

“the construction, reconstruction, alteration and repair of buildings and other structures * * * governing matters of materials, design and construction, fire protection in one-family and two-family dwellings, health, sanitation, safety and maximum energy conservation.”

ORS 455.110(2) (emphasis added). Building codes, unlike fire safety regulations, apply to private residences. See generally 36 Op Atty Gen 440 (1973)

“This distinction is important because the building codes must specifically contain additional fire protection standards for one-family and two-family dwellings, perhaps on the assumption that such dwellings will not be inspected, after construction, by the State Fire Marshal or other fire officials.”

OP 5874 at 5.