

Opn. No. 2002-10

GENERAL CITY LAW, ART. 4, §§ 44(3), 48.

A city need not include plumbing regulations in the city code to satisfy the requirement of State law that it enact or adopt a code of rules regulating the work of plumbing and drainage in that city. A building inspector may conduct plumbing inspections if the plumbing inspector is unavailable provided that the building inspector meets the qualifications for and has been properly appointed as a plumbing inspector.

March 20, 2002

Ronald C. Trabucco, Esq.
City Attorney
City of Tonawanda
City Hall
200 Niagara Street
Tonawanda, New York 14150

Informal Opinion
No. 2002-10

Dear Mr. Trabucco:

You have inquired as to whether article 4 of the General City Law, requiring that the plumbing board adopt rules and regulations regulating the work of plumbing, also requires that those rules be published as a separately enumerated chapter of the City Code. You have also inquired whether a city building inspector may serve as city plumbing inspector if the plumbing inspector is unavailable.

Background

You have advised us that the City of Tonawanda recently completed a recodification of its City Code, which includes local ordinances and local laws. As part of the recodification, the city omitted a chapter entitled "Plumbing," which had been adopted in 1970 by the Examining Board of Plumbers and the Common Council of the City of Tonawanda. This chapter contained procedures for licensing of plumbers and standards for execution of plumbing work. The common council substituted instead a section providing that "[i]t is unlawful for any person to violate any rules and regulations established by the plumbing board." The relevant rules and regulations will be available to the general public in pamphlet form. Your question is whether the rules and regulations must be retained in the City Code itself.

You also advise us that the City Code provides that the city building inspector conducts plumbing inspections when the plumbing inspector is unavailable. Neither inspector supervises the other and neither reviews decisions made by the other.

You have asked the following questions:

1. Does state law permit the recodification, or does it require that the City Code include a separately enumerated plumbing code in the code itself;
2. How does General City Law article 4 apply to the recodification; and
3. Does the provision of the City Code, which authorizes the city building inspector to perform

plumbing inspections when the city plumbing inspector is unavailable, comply with state law.

Analysis

First, we conclude that State law does not prohibit the recodification, you refer to revising the provisions on plumbing. Article 4 of the General City Law governs the regulation of plumbing and drainage by cities. General City Law § 44(3) provides that it shall be the duty of a city's examining board of plumbers to

formulate in conjunction with the local board of health of the city or an officer, board or body performing the duties of a board of health a code of rules regulating the work of plumbing and drainage in such city, including the materials, workmanship and manner of executing such work and from time to time to add to, amend or alter the same, or in their discretion to adopt the standard plumbing code recommended by the state department of health.

This provision only requires "formulat[ion]" of the rules. It does not require that the rules be set forth in the City Code or in any particular form. Thus, a pamphlet setting forth the rules meets this statutory requirements.

We further conclude that state law permits the building inspector to conduct plumbing inspections when the plumbing inspector is unavailable, provided that the building inspector is appointed to conduct the plumbing inspections in full compliance with section 48 of article 4 of the General City Law

We first note that there does not appear to be any conflict between the two positions. You have advised us that neither of the positions is subordinate to the other and that neither position has any supervisory or review powers over decisions made by the occupant of the other position. See Op. Atty. Gen. (Inf.) No. 87-46 (a person may simultaneously hold the positions of town building inspector, zoning enforcement officer and fire inspector). Thus, in our view, these positions are compatible.

General City Law § 48 sets forth the qualifications for and manner of appointment of city plumbing inspectors. We have previously concluded that a city is not authorized to supersede the provisions of this section, since they are a matter of State concern. See Op Atty Gen (Inf) No. 82-81. Therefore, the building inspector may serve as plumbing inspector only if he or she meets the qualifications and is appointed in the manner set forth in section 48.

The Attorney General renders formal opinions only to officers and departments of state government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
Assistant Solicitor General
In Charge of Opinions

By: _____
WILLIAM E. STORRS
Assistant Solicitor General



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