Mr. William C. Shelton  
Director, Department of Housing and Community Development  
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Issues Presented

You inquire regarding the authority of a municipality to enforce the Statewide Fire Prevention Code at a state university. You first ask whether a municipality has authority to enforce the Fire Prevention Code on state property, including buildings, structures and premises, if an agreement has not been entered into with the State Fire Marshall pursuant to § 27-99, or the Director of the Department of Housing and Community Development pursuant to § 36-139.4, for the enforcement of the Code. You also ask whether a municipality has authority to enforce the Uniform Statewide Building Code on state property if such authority has not been delegated by the state building official pursuant to § 36-98.1.

Response

I respond by stating it is my opinion that, absent agreements with appropriate agencies, a municipality has no authority to enforce the Statewide Fire Prevention Code on state property, and localities have no authority to enforce the Uniform Statewide Building Code against the Commonwealth through their building inspectors.

Fact

You advise that a municipality has sought to apply various provisions, including permitting requirements of the Statewide Fire Prevention Code, to open burning in the form of bonfires taking
place on the campus of a state university located within the municipality. In addition, you advise that the municipality has required the state university to obtain a permit before proceeding with a tar pot for a roofing project. For the purposes of this opinion, I assume that the permit is a building permit required by local ordinance of the municipality.

Applicable Authorities

Section 27-99 provides:

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within sixty days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98.

The State Fire Marshal may enter into an agreement as is provided for in § 36-139.4 with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

Section 36-139.4 provides:
The Department [of Housing and Community Development] is hereby authorized to enter into agreements with federal agencies, other state agencies and political subdivisions for services directly related to enforcement and administration of laws, rules, or regulations, or ordinances of such agencies affecting fire safety in public buildings.

Section 36-98.1 provides, in part:

The Building Code shall be applicable to all state-owned buildings and structures, with the exception that §§ [2.2-1159] through [2.2-1161] shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

....

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings. The Department ... shall provide for the inspection of state-owned buildings and enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal’s Office, to other appropriate state agencies having needed expertise; and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested.

Discussion

The long-followed Dillon Rule requires a narrow construction of all powers conferred upon and exercised by local government in Virginia, because such powers are delegated powers.¹ Thus, "municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable."²

A basic rule of statutory construction requires that, where there is no ambiguity in a statute, the statute is not to be construed but is to be given effect in accordance with its plain meaning and intent.³ Sections 27-99 and 36-139.4 clearly and unambiguously provide that, unless the State Fire Marshall, or the Director of the
Department of Housing and Community Development, has entered into an agreement with the municipality to enforce the Fire Prevention Code, the municipality is limited to performing informational, advisory and safety inspections of state buildings at reasonable hours. No language in either statute authorizes a municipality to enforce the Code on state premises.

Conclusion

Therefore, it is my opinion that a municipality has no authority to enforce the Statewide Fire Prevention Code on state property, including buildings, structures and premises, if an agreement has not been entered into with the State Fire Marshall pursuant to § 27-99, or the Director of the Department of Housing and Community Development pursuant to § 36-139.4, for the enforcement of the Code.

A 1975 opinion of the Attorney General responds to the inquiry whether a municipality has authority to enforce the Uniform Statewide Building Code on state property if the building official has not delegated such authority pursuant to § 36-98.1. The opinion concludes that localities have no authority to enforce the Building Code against the Commonwealth through their building inspectors. I concur with the conclusion of the 1975 opinion.


Id. at 402.