



COMMONWEALTH of VIRGINIA

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February 2, 2009

Mr. Henry A. Thompson, Sr.
Sussex County Attorney
P.O. Box 342
Waverly, Virginia 23890

Dear Mr. Thompson:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether § 54.1-1101(A)(9) exempts business owners from having to secure certificates of occupancy following renovations and repairs to commercial structures used by such owners for their businesses.

Response

It is my opinion that § 54.1-1101(A)(9) does not exempt business owners from the requirement to secure certificates of occupancy following renovations and repairs to commercial structures used by such owners for their businesses. However, the Virginia Uniform Statewide Building Code regulations¹ permit the approval of a final inspection to serve as a new certificate of occupancy for additions or alterations to existing commercial buildings.

Background

You advise that Sussex County is experiencing an increase in renovations and repairs of commercial buildings by business owners who own and occupy such buildings. You relate that these business owners are conducting repairs and renovations to their commercial buildings and occupying the buildings without obtaining certificates of occupancy. You further relate that in a particular situation, the owner of a commercial business obtained the requisite building, electrical, and related permits for a major renovation and repair of his existing commercial building on land that he owns and uses for his business operations. The owner hired several subcontractors to perform electrical and other work during such repair and renovation. You advise that one of the subcontractors is in a civil dispute with the owner and is alleging that his contractor's license may have been inappropriately used to obtain building and other permits from the County.

¹See *infra* note 8.

You relate that the owner asserts that he is not required to obtain a certificate of occupancy because he is exempted by § 54.1-1101(A)(9). The business owner asserts that he is a person who actually performed or supervised the repair and improvement of his commercial building for the use of his business as required by § 54.1-1101(A)(9).

You further relate that the affidavit for the required building permits contained language requiring the owner to swear or affirm that “he shall perform the commercial renovations and repairs or have a licensed contractor perform such work.” You advise that based on the language of the affidavit, the business owner asserts that he may hire subcontractors to perform the repairs and renovation work at his commercial site and remain exempt from obtaining a certificate of occupancy.

Additionally, you advise that Sussex County maintains that a certificate of occupancy is required unless the business owner or his qualified employee personally performs the renovations, construction, and repairs. You conclude that § 54.1-1101(A)(9) does not exempt the business owner from the requirement to secure a certificate of occupancy because the business owner actually is managing the work of contractually retained subcontractors and not supervising his own employees in the renovations and repairs. You further conclude that managing such work implies supervision that involves the personal handling of all details; therefore, the owner does not qualify for the exemption from a certificate of occupancy under § 54.1-1101(A)(9).²

Applicable Law and Discussion

Section 54.1-1101 provides that:

A. The provisions of [Chapter 11] shall not apply to:

9. Any person who performs or supervises the repair and improvement of industrial or manufacturing facilities, or a commercial or retail building, for his own use[.]

Chapter 11 of Title 54.1 pertains to the regulation of contractors in the Commonwealth. The purpose for requiring licensure and regulation of contractors is to protect the public from inexperienced, unscrupulous, irresponsible, or incompetent contractors, and in particular those who would enter into contracts with such contractors.³ The Board for Contractors is the agency of the Commonwealth responsible for regulation of the practice of contracting.⁴ The plain meaning of the language⁵ of § 54.1-1101(A)(9) clearly exempts from licensure and regulation by the Board anyone “who performs or

²Section 2.2-505(B) requires that an opinion request from a county attorney “shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney’s legal conclusions.”

³See *J.W. Woolard Mech. & Plumbing, Inc. v. Jones Dev. Corp.*, 235 Va. 333, 337, 367 S.E.2d 501, 503 (1988); see also *Cohen v. Mayflower Corp.*, 196 Va. 1153, 1161, 86 S.E.2d 860, 864 (1955) (noting that licensure of contractors prohibits unqualified persons from entering into agreements).

⁴See VA. CODE ANN. § 54.1-1102(A) (Supp. 2008). The Board derives its authority from §§ 54.1-201 and 54.1-1102(A) and renders “case decisions” pursuant to the Administrative Process Act.

⁵See *Earley v. Landside*, 257 Va. 365, 370, 514 S.E.2d 153, 155 (1999) (“[W]hen the language in a statute is clear and unambiguous, the courts are bound by the plain meaning of that language.”).

supervises the repair or improvement of industrial or manufacturing facilities, or a commercial or retail building, for his own use.”

Although persons may be exempt from licensure and regulation as a contractor by the Board for Contractors under § 54.1-1101(A)(9), they are required to comply with § 54.1-1101(C) of the Uniform Statewide Building Code,⁶ which provides that:

Any person who is exempt from the provisions of [Chapter 11] as a result of subdivision 7, 8, 9, 10, 11, or 12 of subsection A shall comply with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

The use of the word “shall” in § 54.1-1101(C) generally indicates that such requirements are intended to be mandatory.⁷ Section 36-98 of the Uniform Statewide Building Code directs and empowers the Board of Housing and Community Development to adopt and promulgate a Uniform Statewide Building Code.⁸ The primary purpose of the Virginia Uniform Statewide Building Code regulations (“Building Code Regulations” or “Regulations”) is “to protect the health, safety and welfare of the residents of the Commonwealth.”⁹ The Regulations require a certificate of occupancy indicating completion of the work for which a permit is issued “shall be obtained prior to the occupancy of any building or structure, except as provided in this section generally and as specifically provided for in Section 113.8 [13 VAC § 5-63-130(L)] for additions or alterations.”¹⁰ The only exception in 13 VAC § 5-63-160(A) (§ 116.1) from the requirement to obtain a certificate of occupancy is for “an accessory structure as defined in the International Residential Code.” With regard to additions or alterations, 13 VAC § 5-63-130(L) specifically provides:

The approval of a final inspection shall be permitted to serve as the new certificate of occupancy required by Section 116.1 [13 VAC § 5-63-160(A)] in the case of additions or alterations to existing buildings or structures that already have a certificate of occupancy.

The clear provisions of 13 VAC § 5-63-130(L) permit a final inspection of additions or alterations to an existing building or structure that already has a certificate of occupancy to serve as a new certificate of occupancy.

Conclusion

Accordingly, it is my opinion that § 54.1-1101(A)(9) does not exempt business owners from the requirement to secure certificates of occupancy following renovations and repairs to commercial structures used by such owners for their business. However, the Virginia Uniform Statewide Building

⁶ See VA. CODE ANN. tit. 36, ch. 6, §§ 36-97 to 36-119.1 (2005 & Supp. 2008) (codified in scattered sections).

⁷ See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959).

⁸ The Board has adopted regulations entitled the “Virginia Uniform Statewide Building Code.” See 13 VA. ADMIN. CODE ch. 63, §§ 5-63-10 to 5-63-550 (Supp. 2008).

⁹ 13 VA. ADMIN. CODE § 5-63-460(A); see also §§ 36-99(A), 36-103 (2005) (providing that building code regulations are to ensure protection of public health, safety, and welfare).

¹⁰ 13 VA. ADMIN. CODE § 5-63-160(A).

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Code regulations¹¹ permit the approval of a final inspection to serve as a new certificate of occupancy for additions or alterations to existing commercial buildings.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first name "Robert" and last name "McDonnell" clearly legible.

Robert F. McDonnell

1:1303; 1:213; 1:941/08-097

¹¹See *supra* note 8.