



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

C. Eric Young, Esquire
Tazewell County Attorney
108 East Main Street
Tazewell, Virginia 24651

Dear Mr. Young:

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 inquire whether a County is required to enforce the Property Maintenance Code portion of the Uniform Statewide Building Code in a town with a population of less than 3,500 within that County, where the town has adopted the Property Maintenance Code but has not appointed, nor contracted with, an official to enforce the Uniform Statewide Building Code.

Response

It is my opinion that a County is not required to enforce the Property Maintenance Code portion of the Uniform Statewide Building Code in a town with a population of less than 3,500 within that County, where the town has adopted the Property Maintenance Code but has not appointed, nor contracted with, an official to enforce the Uniform Statewide Building Code.

Applicable Law and Discussion

As you note, the Virginia Uniform Statewide Building Code ("USBC") is adopted in several parts: Part I covering new construction, Part II covering rehabilitation, and Part III covering maintenance of existing structures.¹ Enforcement by a locality of the provisions of the USBC for construction and rehabilitation is mandatory.²

With respect to Parts I and II of the USBC, when a town with a population of less than 3,500 has not elected to administer or enforce them, the county in which the town is situated must administer and enforce those parts of the USBC for that town.³ A county is required to administer and enforce the USBC

¹ See 13 VA. ADMIN. CODE §§ 5-63-10 (new construction), 5-63-400 (rehabilitation), and 5-63-450 (maintenance).

² See VA. CODE ANN. § 36-105(A) (Supp. 2010) ("Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department."). See also 2005 Op. Va. Att'y Gen. 121, 122-23.

³ See 2005 Op. Va. Att'y Gen. 121, 122-23 (discussing § 36-105(A)).

in a town only if the town "does not elect to administer and enforce" the USBC.⁴ If a town does elect to enforce Parts I and II, then the obligation otherwise imposed on the surrounding county by § 36-105(A) does not apply.

While the administration and enforcement of Parts I and II of the USCB are mandatory, § 36-105(C) grants localities the discretion to elect to administer and enforce Part III, which relates to the maintenance of existing structures. When a town chooses to enforce Part III, the "inspection and enforcement shall be carried out by an agency or department designated by the local governing body."⁵


Where a town has chosen to enforce the maintenance provisions of the Building Code, but has not designated an agency or department of the Town to fulfill this role, the county surrounding the town is not responsible for administering the maintenance component of the USBC. The text of the statute limits the county's responsibility for the enforcement of the USBC in a town to the "section" of the statute dealing with Parts I and II, the mandatory construction and rehabilitation components, of the USBC.⁶ The term "section" "is generally defined as the smallest distinct subdivision of a legislative act."⁷ Unlike subpart (A), subpart (C) of § 36-105, which is a separate "section" of the statute, does not contain a requirement that the county administer Part III of the USBC in the situation where a town elects to enforce its maintenance provisions, but has failed to designate an agency or department to fulfill this responsibility.⁸ Indeed, a county could not, absent an agreement⁹ or a statutory mandate, administer the maintenance of existing structures component of the USBC within the boundary of a town.¹⁰

Conclusion

Accordingly, it is my opinion that a County is not required to enforce the Property Maintenance Code portion of the Uniform Statewide Building Code in a town with a population of less than 3,500 where the town has adopted the Property Maintenance Code but has not appointed, nor contracted with, an official to enforce the Uniform Statewide Building Code.

With kindest regards, I am

Very Truly Yours,


Kenneth T. Cuccinelli, II
Attorney General

⁴ Section 36-105(A).

⁵ Section 36-105(C).

⁶ Section 36-105(A).

⁷ *Gilmore v. Landside*, 252 Va. 388, 398, 478 S.E.2d 307, 313 (1996).

⁸ Section 36-105(C).

⁹ VA. CODE ANN. § 15.2-1300(B) (2008) ("Any two or more political subdivisions may enter into agreements with one another for joint action.").

¹⁰ *Cf.* § 15.2-1201 (2008) (Providing that a county board of supervisors has the same power and authority as a city council and, further, that "[n]o powers or authority conferred upon the boards of supervisors of counties solely by this section shall be exercised within the corporate limits of any incorporated town except by agreement with the town council.").