

Attorney General Opinion on Fire Code/Application to State Buildings

ADVISORY

To: Head of Fire Departments
From: Stephen D. Coan, State Fire Marshal
Date: January 24, 2001
Re: Opinion of the Attorney General/Application of State Fire Laws & Code on state owned and state authority owned buildings.

The Secretary of Public Safety has requested an opinion of the Attorney General, on behalf of DFS, regarding the scope of enforcement authority of the State Fire Marshal's Office and the local fire service to enforce the fire laws (c.148) and code (527 CMR) in both state and state authority owned buildings. In response, the Attorney General issued an opinion (No.00/01-1) on October 30, 2000, which analyzed whether the statute (c.148) and the code (527 CMR) promulgated thereunder, was applicable to state and state authority owned buildings as it is currently enacted. In reaching his conclusion, the Attorney General reviewed the statute, previous opinions of predecessor Attorney's General and applied traditional rules of statutory construction to reach his conclusion that:

- the state fire code/laws do not apply to state owned buildings
- the state fire code/laws may apply to state authority owned buildings (ie, Massport, MBTA, MWRA, etc.)

The Attorney General concluded that applicability to state authority owned buildings is determined on an individual review of the particular authority's legislative enactment. Thus, those statutes should be reviewed independently.

The Attorney General's opinion concludes with a recommendation to either bring state owned and state authority owned buildings into voluntary compliance or file express legislation to cover both state owned and state authority owned buildings, giving oversight to the State Fire Marshal.

I concur with the Attorney General's opinion, that the gap in applicability of fire codes and laws need to be addressed to ensure the safety of the public and firefighters who will be asked to respond in emergencies.

Two possible solutions to remedy the problem are:

1. Request the Governor file an executive order to all state agencies to voluntary comply with the fire code or;
2. File new legislation to make the law and code applicable to all state owned buildings and state authority owned buildings.

This memorandum is intended to summarize the Attorney General's opinion and request the fire services' input as to which approach they feel is best so that I may convey this information to the Secretary and the Governor. Thank you for your help in this matter.