

amount each individual employee would receive renders the agreements approved by the board on June 15, 1970, unenforceable.

Opinion No. 71-44—April 12, 1972

SUBJECT: ADOPTION OF RULES NOT COVERED BY STATE HOUSING LAW—Commission of Housing and Community Development not empowered to adopt regulations on subjects not covered by State Housing Law.

Requested by: DIRECTOR, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Opinion by: EVELLE J. YOUNGER, Attorney General
Blanche C. Bersch, Deputy

The Honorable Donald F. Pinkerton, Director, Department of Housing and Community Development of the State of California, has requested an opinion on the following questions concerning the State Housing Law as amended by chapter 1436, Statutes of 1970:

1. In directing the Commission of Housing and Community Development¹ to adopt regulations that shall impose the same requirements as are contained in various named uniform codes, does section 17922² preclude the Commission from adopting regulations on subjects not covered by those enumerated codes? If the Commission may adopt such additional regulations, are the cities and counties also required to adopt said regulations?

2. In providing that cities and counties, within one year of the effective date of the statute, must adopt ordinances or regulations imposing the same requirements as are contained in the regulations adopted by the Commission pursuant to section 17922, does section 17958 preclude the cities and counties from adopting additional regulations on those subjects which are not covered by the regulations adopted by the Commission?

3. In directing the Commission to adopt regulations that shall impose the same requirements as are contained in various named uniform codes, does section 17922 mandate the adoption by the Commission of those requirements of the various uniform codes which are administrative in nature as well as those provisions which are substantive; or may the Commission adopt separate regulations pertaining to administration?

4. In providing that a city or county must make an express finding that changes or modifications from the requirements of State regulations are reason-

¹ The Commission of Housing and Community Development will be referred to as "the Commission" and the Department of Housing and Community Development will be referred to as "the Department." See Health and Safety Code § 17920.

² All code references are to the Health and Safety Code, unless otherwise noted.

ably necessary due to local conditions before such changes or modifications may be included in the ordinances or regulations adopted by the city or county, does section 17958.5 require an express finding for each particular change or modification?

5. Does section 17958.7 require that the Department take action, such as review and interpretation of the propriety of the finding, when a copy of a finding made by a city or county is filed with it?

6. Does section 17958.7 provide an exception to section 17958 for city or county regulations that have been adopted prior to November 23, 1970, exempting such regulations from compliance with the provision that local regulations must conform to the State regulations unless express findings have been filed with the Department?

The conclusions are:

1. Pursuant to the provisions of section 17922, the Commission is not empowered to adopt rules and regulations on subjects which are not covered by the enumerated uniform codes.

2. The provisions of section 17958, which direct the cities and counties to adopt ordinances or regulations imposing the same requirements as are contained in the rules and regulations promulgated by the Department, do not restrict the local governmental agencies from adopting additional regulations on subjects which are not covered by the Department's regulations.

3. Section 17922 does not require that the Department adopt the administrative provisions of the enumerated uniform codes.

4. If a city or county, in adopting the ordinances or regulations pursuant to section 17958, determines that certain changes or modifications in the requirements contained in regulations adopted by the Department are reasonably necessary because of local conditions, it may in a proper case make a single express finding that covers more than one change or modification.

5. When a finding made by a city or county is filed with the Department, the latter is not required to take action such as review and interpretation of the propriety of the finding.

6. Section 17958.7 provides an exception to section 17958 for city or county regulations that have been adopted prior to November 23, 1970, and such regulations are exempt from compliance with the provision that local regulations must conform to the State regulations unless express findings have been filed with the Department.

ANALYSIS

1. *The scope of the Commission's authority in adopting rules and regulations pursuant to section 17922*

Section 17921 provides that the Department of Housing and Community

Development shall adopt rules and regulations governing various phases of building activities. Section 17922 provides as follows:

"Except as otherwise specifically provided by law, the rules and regulations adopted, amended, or repealed from time to time pursuant to this chapter shall impose the same requirements as are contained in the Uniform Housing Code, 1970 edition, the Uniform Building Code, 1970 edition, as adopted by the International Conference of Building Officials, the Uniform Plumbing Code, 1970 edition, as adopted by the International Association of Plumbing and Mechanical Officials, the Uniform Mechanical Code, 1970 edition, as adopted by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, and the National Electrical Code, 1968 edition, as adopted by the National Fire Protection Association . . ."

Section 17922 was amended in 1970. Prior to the amendment, the section read as follows:

"The rules and regulations adopted, amended, or repealed from time to time pursuant to this chapter shall include provisions imposing requirements equal to or more restrictive than those contained in the Uniform Housing Code, 1958 edition, the Uniform Building Code, 1961 edition, as adopted by the International Conference of Building Officials, the Uniform Plumbing Code, 1958 edition, as adopted by the Western Plumbing Officials Association, and the National Electrical Code, 1959 edition (1960 printing), as adopted by the National Fire Protection Association. The Department shall adopt such other rules and regulations as it deems necessary to carry out the provisions of this part . . ."

The 1970 amendment makes reference to the latest editions of the Uniform Housing Code, the Uniform Building Code, the Uniform Plumbing Code, and the National Electrical Code, whereas the statute prior to amendment referred to earlier editions of those codes. In addition, the 1970 amendment added the Uniform Mechanical Code to the list of codes mentioned in the statute.

The provisions relating to the requirements of these codes are set forth in language which differs significantly from that contained in the section as it existed prior to amendment. This difference is two-fold. Whereas the section originally directed that the rules and regulations "shall include provisions imposing requirements equal to or more restrictive than those contained in [the various specified codes]," the statute as amended provides that the rules and regulations "shall impose the same requirements as are contained in [the various specified codes]." Further, the provision that "the Department shall adopt such other rules and regulations as it deems necessary to carry out the provisions of this part" was deleted from the section by the 1970 amendment.

It is apparent that the Legislature intended to remove the Department's authority to adopt rules and regulations imposing substantive requirements other

than those found in the specified codes. The deletion of the sentence specifically giving the Department such power, and the change from "shall include provisions imposing requirements" to "shall impose the same requirements" clearly have the effect of so delineating the power of the Department.

2. The scope of authority retained by a city or county pursuant to section 17958

Section 17958 imposes upon the governing board of every city or county the duty to adopt ordinances or regulations "imposing the same requirements as are contained in the regulations adopted pursuant to section 17922."

However, the limitation which has been placed upon the Department does not similarly apply to preclude cities and counties from adopting rules and regulations which impose requirements additional to those found in the uniform codes. When section 17958 is read in conjunction with other provisions of the code, it cannot be interpreted as excluding the adoption of additional ordinances and regulations deemed desirable by the local governmental agencies.

Initially, it is evident that the Legislature specifically contemplated the adoption by cities and counties of ordinances and regulations relating to zoning and property line requirements. Section 17922 specifically provides that:

"Local use zone requirements, local fire zones, building setback, side and rear yard requirements, and property line requirements are hereby specifically and entirely reserved to the local jurisdictions . . ."

Thus, in at least these particular areas, the cities and counties would necessarily be able to adopt ordinances and regulations.

Moreover, a city or county is empowered to make changes or modifications in the requirements contained in regulations adopted by the Department when it determines that such changes or modifications are reasonably necessary because of local conditions. Section 17958.5. The local appeals boards are given the final power to determine whether rules or regulations which have been adopted by the Department are reasonable when applied in the local areas. Section 17925. The legislative sensitivity to, and deference for, local conditions and needs are inconsistent with an interpretation of section 17958 which restricts the cities and counties from adopting ordinances and regulations on particular subjects which, although not covered by the regulations adopted by the Department, may nevertheless have considerable local significance.

Finally, section 17930 indicates that the Legislature contemplated the possible adoption by local governmental agencies of regulations "greater" or more restrictive than the regulations adopted by the Department. That section deals with appeals which may be brought regarding the application of rules and regulations, and it provides, in part, that:

"The Commission shall not, however, hear any appeals regarding local regulations which are equal to or greater than those prescribed by this part."

Since the legislative intention was to allow the cities and counties to adopt regulations more restrictive than those promulgated by the Department, it reasonably follows that the adoption by cities and counties of regulations additional to those imposed by the Department was similarly contemplated.

3. *The effect of section 17922 on regulations of an administrative nature*

Although the Department is limited in adopting rules and regulations by the provisions of the specified model or uniform codes, this limitation applies only to substantive regulations. The statutes, when read as a whole, demonstrate that the reference in section 17922 to the "same requirements" was not intended to include requirements of an administrative nature.

Section 17921 specifically states that the rules and regulations to be adopted by the Department are for the purpose of "the protection of the public health, safety, and general welfare of the occupant and the public . . ." We recognized this in 43 Ops. Cal. Atty. Gen. 27 (1964), which concerned section 17922 as it existed prior to the 1970 amendment:

"The Legislature has thus established the uniform codes as guidelines to be used in promulgating rules and regulations *which have as their purpose the protection of the public safety.*" (At page 30; emphasis added.)

It is, therefore, the substantive criteria contained in the specified uniform codes, which criteria have been set forth for the purpose of promoting safety and stability in building activities, to which the Department's attention is properly directed.

That the Legislature did not intend to incorporate by reference the administrative provisions of the specified uniform codes is also evident from the fact that the State Housing Act includes sections which specifically designate procedures for administrative actions such as enforcement of the regulations and appeals from allegedly erroneous or unlawful applications of those regulations. See sections 17921, 17930, 17931, 17932, 17952 and 17965. These procedures may differ from those contained in the uniform codes. See sections 204 and 303(a) of the Uniform Building Code, 1970 editions.

It must therefore be concluded that the Commission has the power to adopt separate regulations pertaining to administration.

4. *The scope of express findings which are required by section 17958.5*

A local governmental agency, in adopting the ordinances or regulations pursuant to section 17958, may make changes or modifications in the requirements contained in regulations adopted by the Department if it determines that such changes or modifications are reasonably necessary because of local conditions. Section 17958.5. Findings of reasonable necessity are prerequisite to modifications or changes, as provided by section 17958.7:

"The governing body of a city or county before making any modifications or changes pursuant to section 17958.5 shall make an express finding that such modifications or changes are needed. Such a finding shall be available as a public record and a copy, together with the modification or change, filed with the department . . ."

The wording of this section does not clearly indicate whether a separate finding must be made for each change or modification. The first sentence of the section requires "an express *finding* [for] such *modifications or changes*" (emphasis added), thereby indicating that a single finding may be sufficient although several changes have been accomplished. The following sentence, however, in directing the filing and availability of findings, contains language referring to "*a finding*" and "*the modification or change*," (emphasis added); this appears to contemplate a separate finding for each modification.

In determining the legislative intent, it is more reasonable to look to that part of the statute which covers the process of actually preparing the finding rather than that part which is concerned with the filing and availability of the finding. Directing our attention to the provision that the city or county "shall make an express finding that such modifications or changes are needed," we conclude that a single finding may suffice to support more than one change or modification. However, it is reasonable to interpret the statute as requiring the finding to be specifically directed toward each and every change or modification which it purports to support. Therefore, a single finding could not cover a number of changes or modifications in a situation where the subject matter or the factual basis for the changes were not related.

5. *The Department's role in relation to findings made by a city or county*

After an express finding has been made by a city or county, section 17958.7 requires that it be filed with the Department. The statute thus provides that the Department function as a depository, and it does not require or permit the Department to exercise additional functions such as review or interpretation of the findings.

This conclusion is mandated both by the restrictive language of section 17958.7 as it pertains to the Department and by the fact that the Legislature provided other methods of determining whether changes or modifications adopted by local agencies would be valid.

As noted above, a city or county may make changes or modifications when it determines that such changes or modifications are reasonably necessary. Section 17958.5. This indicates that the local agencies are to be vested with the initial power to consider and decide the issue of reasonable necessity.

Moreover, the local appeals board is vested with the power to determine whether a rule or regulation adopted by the Department is not reasonable when applied in the local area. Upon a decision by the local appeals board that

it is not reasonable for the rule or regulation to be applied in the local area, such rule or regulation "shall have no application within such local area." Section 17925. It is thus evident that the local appeals board is the final arbiter of such an issue.

Section 17925 also requires that a copy of the determination of the local appeals board, along with a report of the reasons for such determination, shall be filed with the Department. This further reinforces the interpretation that the Department's role in regard to findings is that of a depository. The Legislature has required that copies of the local appeals board's determinations be filed with the Department, although it is clear that such determinations need not be reviewed nor interpreted by the Department. It must reasonably be concluded that the same intention was present in regard to the findings of local governmental agencies.

6. *The effect of the 1970 amendments to the State Housing Law on local building regulations adopted prior to November 23, 1970*

Section 17958 provides that:

"The governing body of every city or county shall adopt ordinances or regulations imposing the same requirements as are contained in the regulations adopted pursuant to Section 17922 within one year after the effective date of this section. If any city or county does not adopt such ordinances or regulations, the provisions of this part and the rules and regulations promulgated thereunder shall be applicable within one year after the effective date of this section."

Section 17958.7 provides, in part, that:

". . . Nothing contained in this part shall be construed to require the governing body of any city or county to alter in any way building regulations enacted on or before the effective date of this section."

The question arises as to whether the above quoted language of section 17958.7 provides an exemption to section 17958 for those local regulations adopted prior to November 23, 1970. We examined this issue in 54 Ops. Cal. Atty. Gen. 87 (1971) and we there concluded that local building rules and regulations adopted prior to November 23, 1970, are exempt from the provisions of section 17958, even though the preexisting rules and regulations do not conform to the State rules and regulations. We noted that:

"Interpreting section 17958, in light of the proviso contained in section 17958.7, it seems reasonable to conclude that the provision of section 17958 imposing state regulations upon cities and counties failing to adopt regulations imposing similar requirements by a prescribed time has a limited application. In other words, section 17958 should be interpreted as having application *only* to the extent that a given building activity to be regulated is not already regulated by an existing city or county building regulation enacted on or before November 23, 1970. To

otherwise interpret section 17958 would be to ignore the plain language of the proviso contained in section 17958.7. A construction that words were used in vain [citation] or that they are surplusage is to be avoided [citations].

" . . .

"Although to limit application of section 17958 necessarily will lessen the degree of uniformity obtainable, it is believed this result is acceptable since the provisions of section 7, Chapter 1436, Statutes 1970, and section 17958.5, permitting differences in regulations based on local conditions, indicate that the Legislature never sought complete or total uniformity."

Opinion No. CV 71-287—April 13, 1972

SUBJECT: LOANS TO JOINT EXERCISE OF POWER AGENCIES—Agencies created pursuant to the Joint Exercise of Powers Act may borrow money for a short period of time to meet operational expenses until expected revenues are available.

Requested by: CALIFORNIA COUNCIL ON INTERGOVERNMENTAL RELATIONS

Opinion by: EVELLE J. YOUNGER, Attorney General
Clayton P. Roche, Deputy

The California Council on Intergovernmental Relations has requested an opinion on the following question:

May an agency composed of a group of cities created pursuant to the Joint Exercise of Powers Act borrow money for a short period of time to meet operational expenses until expected revenues are available for these expenses?

The conclusion is:

If so provided in the agency's agreement, such Joint Exercise of Power Agency may obtain funds for a short period of time to meet operational expenses until expected revenues are available (1) from advances of funds from the parties to the agreement under the authority of section 6504 of the Government Code or (2) from private lending sources pursuant to the temporary borrowing powers granted local agencies in sections 53850 through 53858 of the Government Code.

ANALYSIS

The Joint Exercise of Powers Act is contained in section 6500 *et seq.* of the Government Code.¹ It permits "... two or more public agencies by agreement . . .

¹ All section references are to the Government Code unless otherwise indicated.