

ing where evidence is taken to the end of determining an issue of fact and a decision made on the basis of that evidence." 20 Cal. App. 3d at 95.

It should be noted that students may be suspended for a limited period without a prior hearing. Section 10607; *Charles S.*, 20 Cal. App. 3d at 91. "Brief suspensions are often justified by the interest of school officials in maintaining an atmosphere conducive to learning." *The Black Coalition v. Portland School District*, 484 Fed.2d at 1044. The student may be suspended pending the hearing before the governing board on expulsion.

We conclude therefore that the hearing before the County Board is a de novo hearing.

Opinion No. CV 74-159—September 6, 1974

SUBJECT: STATE HOUSING ACT—The phrases "local conditions" and "local conditions or factors" contained in the State Housing Act are not broad enough to include political, social, or economic conditions; a state political subdivision may waive a particular rule or regulation as not applicable to a subarea due to local conditions; rules and regulations of the State Housing Act apply to all dwellings in the State regardless of location, zoning, or permanency.

Requested by: DISTRICT ATTORNEY, MENDOCINO COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
Thomas Scheerer, Deputy

The Honorable Duncan M. James, District Attorney of Mendocino County has requested the opinion of this office on questions concerning the State Housing Act. (Health and Safety Code § 17910, *et seq.*), which may be restated as follows:

1. Do the phrases "local conditions or factors" in section 17925 and "local conditions" in section 17958.5 include man-caused phenomena such as a depressed economic situation or a lack of housing to accommodate the local populace?
2. May a political subdivision of the State determine that a subarea of said political subdivision may have special requirements allowing for nonapplicability of the Uniform Building Code, or must the waiver of the requirements be on a case-by-case basis?
3. May a political subdivision of the State establish separate building standards for construction of cabins or other semipermanent structures in certain specified zones such as recreational, open space, and forest conservation?

The conclusions are:

1. The phrases "local conditions or factors" and "local conditions" as used in

sections 17925 and 17958.5 are not broad enough to include man-caused phenomena such as a depressed economic condition or a lack of adequate housing to accommodate the local populace.

2. A political subdivision of the State may determine that a subarea of said political subdivision may have special requirements allowing for the nonapplicability of the Uniform Building Code and such a waiver need not be accomplished on a case-by-case basis.

3. A county may not determine that certain construction standards need not be adhered to in various subareas of the county due to zoning regulations in the subarea. Similarly, a county may not determine that the construction standards need not be adhered to because of the location of the structures or because of their semipermanent nature. The county may only determine that pursuant to section 17925 or section 17958.5, the local conditions make the enforcement of the construction standards unreasonable and therefore inapplicable in the subarea.

ANALYSIS

I

The Commission of Housing and Community Development is required by section 17922¹ to impose the same requirements statewide as are contained in the Uniform Housing Code, Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and National Electric Code.

One of the purposes of the State Housing Law is to protect the public health and safety. *Baum Electric Co. v. City of Huntington Beach*, 33 Cal. App. 3d 573, 581 (1973). Another of its purposes is to achieve statewide uniformity of building codes.

In amending the State Housing Law in 1970, the Legislature declared its intent:

"The Legislature hereby finds and declares that the uniformity of codes throughout the State of California is a matter of statewide interest and concern since it would reduce housing costs and increase the efficiency of private housing construction industry and its production.

"Uniformity can be achieved within a framework of local autonomy, by allowing local governments to adopt changes making modifications in such codes based on differences in local conditions, but requiring express findings as reasons for those changes, which would serve as a deterrent to the excessive adoption of changes or modifications.

"Thus, such uniformity, by bringing about such reduction of costs and increase of efficiency, would substantially help to meet the housing needs within this state."

Stats. 1970, c. 1436, p. 2786, § 7.

¹ All references are to the Health and Safety Code unless otherwise indicated.

Local governmental authorities are required to "impose the same requirements as are contained in the regulations adopted pursuant to Section 17922." Section 17958. However, the Legislature has acknowledged the local interest in housing code requirements. In section 17922, there is a paragraph which specifically and entirely reserves such matters as local use zone requirements, local fire zones, building setback, side and rear yard requirements, and property line requirements to the local jurisdictions.

Section 17925 provides an appeal process for any person, firm, corporation, or governmental agency to oppose the application of any rule or regulation in the local area on the ground that "local conditions or factors" would make it unreasonable. Section 17958.5 provides for local variances as are determined to be reasonably necessary due to "local conditions."

The Legislature made no attempt to define the phrases "local conditions" and "local conditions or factors" in the State Housing Law. These "local conditions" must be stated, however, and filed with the Department of Housing and Community Development. Section 17958.7. The Department merely acts as a depository for these findings of local conditions. 55 Ops. Cal. Atty. Gen. 157 (1972). The Legislature views this process as a deterrent to the excessive adoption of changes or modifications. Stats. 1970, c. 1436, p. 2786, § 7.

It would therefore appear that "local conditions" are anything that the local board deems them to be and deems serious enough to put in the public record as being a "local condition." Seemingly, it could include local unemployment or a housing shortage or any similar phenomenon. However, to so conclude, would be to ignore one of the purposes of the State Housing Law, i.e., statewide uniformity of building codes. To hold that the phrases "local conditions" and "local conditions or factors" include phenomena which must be classified as political, economic, or social would be to destroy any possibility of statewide uniformity in building codes.

The conclusion must be that the phrases "local conditions" and "local conditions or factors" refer only to conditions which may be labeled broadly as geographical or topographical. Such conditions may include the availability of electricity or water in the particular area or even the general development of the particular area.

In a 1962 opinion, this office held that a County Board of Supervisors may not exempt rural residences of three acres or more from the State Housing Law unless it was shown, after a hearing, that the particular rules and regulations were unreasonable as applied to the particular local area due to local conditions or factors. 39 Ops. Cal. Atty. Gen. 324 (1962). The opinion mentioned "such considerations as general development or topography" and referred to "unusual circumstances" when discussing "local conditions." As an example, it allowed that "if it be shown that electricity or water is not and will not be available to a certain area in the immediate future, strict compliance with the uniform plumbing or electric codes becomes impractical and unreasonable." 39 Ops. Cal. Atty. Gen. 324, 325 (1962).

Therefore, this office concludes that the phrases "local conditions" and "local conditions or factors" include only those conditions which fall into the category of geographical or topographical conditions. The phrases are not broad enough to include political, social, or economic conditions.

II

Pursuant to section 17925, the local subdivision through its local appeals board may determine that a particular rule or regulation is not applicable to the local area due to the local conditions which make its application unreasonable. There is no requirement that such determinations be made on a case-by-case basis. Once the local appeals board has made its determination, "the rule or regulation shall have no application within such local area." Section 17925.

Pursuant to section 17958.5, the local subdivision of the State through its governing body may make changes or modifications in the State's regulations as it determines are reasonably necessary because of local conditions. The local subdivision would be acting legislatively and would not be restricted to a case-by-case analysis.

Perhaps the paramount purpose of the State Housing Law and the building regulations adopted pursuant thereto is the protection of the public health and safety. *Baum Electric Co. v. City of Huntington Beach*, *supra*, 33 Cal. App. 3d 573, 581 (1973). Therefore, any local subdivision which declared that a particular rule or regulation was inapplicable to a local area would be obligated to provide alternative and equivalent protection of the public health and safety.

In the recent case of *Green v. Superior Court*, 10 Cal. 3d 616, 627 (1974), the Supreme Court described the State Housing Law as follows:

"[I]n California, the Department of Housing and Community Development has established detailed, statewide housing regulations (See Health & Saf. Code, § 17921; Cal. Admin. Code tit. 25, §§ 1000-1090), and the Legislature has expressly authorized local entities to impose even more stringent regulations. (See Health & Saf. Code, § 17951.)"

The inference to be drawn from such dicta is that the minimum health and safety standards as set forth in the rules and regulations must be maintained. Local conditions may warrant that the local subdivision of the State determines that a particular rule or regulation is inapplicable in the subdivision, but local conditions will never warrant that the public's health and safety be jeopardized in a subarea.

III

The regulations adopted by the Commission of Housing and Community Development apply to all dwellings or portions thereof and buildings and structures accessory thereto. Title 25 Calif. Admin. Code § 1002. The permanency of the dwelling and its location do not exempt it from the State's regulations. The zoning of the area in which the dwelling stands does not serve to exempt it from the State's regulations. The only routes to exemption from the rules and regulations

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contained in Title 25 of the California Administrative Code are those routes found in sections 17922 and 17958.5, outlined hereinabove. That is, the local subdivision may determine that the regulations regarding dwellings are unreasonable when applied to a particular subarea due to the local conditions and declare the regulations inapplicable to that subarea. It may accomplish this through its local appeals board pursuant to section 17922 or through its governing body pursuant to section 17958.5.

Again to conclude that a rule or regulation may be held inapplicable to a particular area is not to conclude that the public health and safety may be jeopardized in that subarea.

To conclude, it is the opinion of this office that the phrases "local conditions" and "local conditions or factors" in the State Housing Act are not broad enough to include phenomena which must be classified as political, economic or social. The phrases include only those phenomena which may be labeled broadly as geographical or topographical.

This office further concludes that a finding of local conditions sufficient to justify the finding on nonapplicability to a certain area of a statewide rule or regulation need not be accomplished on a case-by-case basis, but may be accomplished legislatively pursuant to section 17958.5.

This office further concludes that the rules and regulations adopted pursuant to the State Housing Act apply to all dwellings in the State regardless of location, zoning, or permanency. The only routes to exemption are those outlined in sections 17922 and 17958.5.

Opinion No. CV 72-262—September 12, 1974

SUBJECT: LIBRARY FUNDS—SPECIAL TAX—Section 28351 of the Education Code provides for the levy of a special tax for library funds by the board of supervisors if the school district public library was formed pursuant to § 28001 of said code.

Requested by: COUNTY COUNSEL, EL DORADO COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
Elizabeth Palmer, Assistant

The Honorable Noble Sprunger, County Counsel of El Dorado County has asked for an opinion on the following question:

Does section 20401 of the Education Code or any other provision of law permit the levy of a library fund tax against a school district's assessed valuation?

The conclusion is:

The only provision for the levy of a special tax for library funds by the board