

Opinion No. 58-23

January 30, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. H. B. Wood, Board Manager, Contractors License Board, P. O. Box 1179,
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QUESTION

QUESTIONS

(1) Which Uniform Building Code are we to use to determine whether a contractor is complying with the law or not? i.e. Are we operating under the 1939 code as adopted by the 16th Legislature, March 16, 1939 or are we correct in using the 1955 edition?

(2) If it is ruled that no revisions are permissible after the 1939 law, exactly what was the date of the proper code book? As far as we can determine, the first actual publication took place in 1945.

CONCLUSIONS

(1) Uniform Building Code as adopted by the Building Officials Conference in October, 1927, with revisions as approved in October, 1939.

(2) See Opinion.

OPINION

ANALYSIS

Under the provisions, Ch. 96, Sec. 5(c), Session Laws of 1943, there was imposed on the Contractors License Board the following:

"It shall be the duty of the Board to adopt and promulgate such rules and regulations as they may deem necessary to carry out the provisions of this act."

The application of this provision necessarily was restricted to licensing procedures, since no standards of building or construction were then established.

In 1945, the legislature first provided by Ch. 108, Sec. 12, for the issuance of orders prescribing minimum standards for installation of plumbing and for construction, alteration or repairing of buildings. This act specifically provided in part as follows:

"The State Contractors' License Board shall issue orders, prescribe the minimum standards for the installation of plumbing, which orders shall substantially embody the plumbing principles, as promulgated by the United States Bureau of Standards, Department of Commerce's recommended minimum requirements for plumbing. The Contractors' License Board is further directed to issue orders prescribing the minimum standards for the construction, alteration, or repairing of buildings, other than in connection with electrical wiring connected therewith, and the installation of gas piping and appliances, which orders shall substantially embody the applicable provisions of the Uniform Building Code, as adopted by the Pacific Coast Building Officials Conference of the 6th Annual Meeting in October, 1927, with revisions and additions approved in the 17th Annual Meeting in October, 1939."

By implication (See Attorney General's Opinion No. 57-214) the aforementioned section was amended by the enactment of Chapter 145, Session Laws of **1949**, whereby was created the Plumbing Administrative Board. Otherwise, the 1945 minimum standards act remains effective and unchanged at the present time. With the aforesaid history of the considered statute presented, we now turn to the task of construing the language found.

The Legislature specifically set out that all orders establishing minimum standards would substantially embody the provisions of the Uniform Code of 1927 with revision and additions approved through October of 1939. While the Board by this legislative limitation is not required to follow verbatim the requirements of the Code, it must certainly follow substantially the approved practices and standards as were considered minimum techniques in 1939. Nowhere in the article (67-16) compiled to cover the jurisdiction and responsibility of the Contractors' License Board is there suggestion that any revision, addition or other type progressive adoptions by the Pacific Coast Building Officials Association as part of the Uniform Building Code may be considered by the Board. And further, in keeping with the maxim "Expressio unius est exclusio alterius," 2 N.M. 49, as a rule of construction, the inclusion of one excludes all others. Certainly, it would have been a simple matter for the Legislature to provide for the 1927 Uniform Code with all revisions as may be adopted subsequently as a part thereof. This, however, was not done.

As further evidence of the thinking of the Legislature, the 1957 Session was confronted with Senate Bill No. 214, introduced by Senator W. C. Wheatley, which was an attempt to specifically amend the 1945 Act so as to permit the adoption by the Contractors' License Board of all subsequent revisions of the Uniform Code. The proposed amendatory act was expressed in part as follows:

". . . The contractors' license board is further directed to issue orders prescribing the minimum standards for the construction, alteration, or repairing of buildings, other than in connection with electrical wiring connected therewith, and the installation of gas piping and appliances, which orders shall substantially embody the applicable provisions of the Uniform Building Code, as adopted by the (Pacific Coast Building Officials Conference of the 6th annual meeting in October, 1927, with revisions and

additions approved in the 17th annual meeting in October, 1939.) **International Conference of Building Officials, with revisions and additions as approved from time to time by it.**"

A check of the disposition of S.B. 214 reveals the Senate Committee adopted a **Do Not Pass** recommendation.

Accordingly, it is our opinion that the existing minimum building statutes which may be looked to as effectual in New Mexico must substantially comply with those, as aforesaid, adopted in 1939. It is apparent that the Legislature did not intend to empower the Board with authority to adopt the Uniform Code in its present form.

In response to your second question, it is our opinion that any annual or periodic publication of the Uniform Building Code may be adopted which includes the Code provisions as revised through October, 1939, but may not adopt the provisions of a published code since 1939 which differ from those of the stated date.