



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 9, 2024

Nick Manley, Esq.
Attorney, City of Southaven
8710 Northwest Drive
Southaven, Mississippi 38671

Re: City's Ability to Exempt Areas from Certain Building Code Requirements

Dear Mr. Manley:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the city of Southaven ("City") previously established a West End District ("District"), which provides economic incentives to assist with revitalization. As part of the City's efforts to revitalize the area, the City has been informed that certain buildings within the District are not a sound investment due to the costs associated with ensuring compliance with the current city building code. The City administration would thus like to explore incentives, other than economic based, to assist with revitalization within the District.

Question Presented

Assuming the City sets forth the specific conditions under which certain elements of the City Building Code do not apply and ensures that all persons or entities within a particular class and District are being treated equally and not in an arbitrary and capricious manner, may the City, via a properly drawn ordinance, exempt buildings located within the District from various building code requirements?

Brief Response

Mississippi Code Annotated Section 17-2-4(1) mandates certain minimum building codes for counties or municipalities. If the City did not opt out of Section 17-2-4(1)'s application within 120 days of its effective date of August 1, 2014, as provided by Section 17-2-4(3), state law does not provide for exemptions from these mandatory minimum building codes. This said, the City's

requisite adopted code may exempt certain historical or other properties from the code requirements, but such determination is outside the scope of our authority.

Applicable Law and Discussion

Mississippi law mandates certain minimum building codes for counties or municipalities. As set forth in Section 17-2-4(1):

Except as provided in Section 17-2-1(1) and subsection (3) of this section, a county board of supervisors or municipal governing authority *shall adopt and amend as minimum codes* one (1) of the following as the State Uniform Construction Code:

(a) One (1) of the last three (3) adopted editions of the International Building Code (IBC) and any specific appendix or appendices as adopted and amended by the Mississippi Building Codes Council;

(b) One (1) of the last three (3) adopted editions of the International Residential Code (IRC), and any specific appendix or appendices as adopted and amended by the Mississippi Building Codes Council, with the exception of those provisions that require the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling;

(c) Other codes addressing matters such as electrical, plumbing, mechanical, fire and fuel gas, and any specific appendix or appendices as adopted and amended by the Mississippi Building Codes Council.

(emphasis added). The term “shall” as used in Section 17-2-4(1) indicates a mandatory, rather than discretionary, requirement. *See Pitalo v. GPCH-GP, Inc.*, 933 So. 2d 927, 929 (Miss. 2006) (“Simply stated, ‘shall’ is mandatory, while ‘may’ is discretionary.”).

The only exception from Section 17-2-4(1) applicable to your situation is Section 17-2-4(3), which provided counties or municipalities a period of 120 days from the provision’s effective date — August 1, 2014— to “opt out” of Section 17-2-4(1)’s mandate. Miss. Code Ann. § 17-2-4(3). It is thus the opinion of this office that if the City did not opt out of Section 17-2-4(1)’s mandate within 120 days of August 1, 2014, as set forth in Section 17-2-4(3), the City may not now set forth specific conditions under which certain elements of the City building code do not apply. This said, the City’s requisite adopted code may exempt certain historical or other properties from the code requirements. However, such determination is outside the scope of our authority, and this office may not issue an official opinion regarding determinations of fact. *See MS AG Op., Barton* at *1 n.2 (May 17, 2021) (identifying questions of fact and mixed questions of fact and law as two of various kinds of questions that cannot be addressed by official opinion); *see also MS AG Op., Tullos* at *3 (Aug. 27, 2018) (“[O]ur office cannot interpret municipal ordinances by official opinion . . .”).

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION