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SPRINGFIELD

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FILE NO. S-1132

**COUNTIES:**  
Enforcement of County  
Building Code Within  
Municipal Limits

Honorable Jack Hoogasian  
State's Attorney  
County of Lake  
County Building  
Waukegan, Illinois 60095

Dear Mr. Hoogasian:

This responds to your letter requesting my opinion as to whether a county has the authority to enforce its building code within the corporate limits of a city or village where it appears that the municipality may not be enforcing its building code as strictly as the county enforces its code. The applicable statute is section 25.15(a) of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 423.) which provides in pertinent part:

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"The county board in any county with a population not in excess of 1,000,000 located in the area served by the Northeastern Illinois Metropolitan Area Planning Commission may prescribe by resolution or ordinance reasonable rules and regulations (a) governing the construction and alteration of all buildings and structures and parts and appurtenances thereof and governing the maintenance thereof in a condition reasonably safe from the hazards of fire, explosion, collapse, contagion and the spread of infectious disease, \* \* \* (b) for prohibiting the use for residential purposes of buildings and structures already erected or moved into position which do not comply with such rules and regulations, and (c) for the restraint, correction and abatement of any violations. However, the county shall exempt all municipalities located wholly or partly within the county where the municipal building code is equal to the county regulation and where the local authorities are enforcing the municipal building code. \* \* \*" (emphasis added.)

I assume that the municipalities about which you inquire have building codes "equal" to that of the county for purposes of section 25.15(a). Where this is the case, it is my opinion that the county cannot enforce its building code within municipal limits merely because the municipality enforces its code less strictly than does the county.

Section 25.15(a) exempts a municipality from the county building code when the municipality has an "equal" building code of its own and when "the local authorities are enforcing the municipal building code". The statute provides

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no requirement as to the strictness of that enforcement. Further, it is well established that reasonable discretion is reposed in governmental officials charged with the enforcement of a statute. (Sangamon County Fair and Agr. Ass'n. v. Stanard, 9 Ill. 2d 267; Zehender and Factor v. Murphy, 386 Ill. 258.) Consequently, in situations where a municipality has a building code "equal" for purposes of section 25.15a to that of the county, it is my opinion that as long as the municipal officials exercise reasonable discretion in the enforcement of its building code, the county may not attempt to enforce its building code within the municipality's corporate limits.

Very truly yours,

A T T O R N E Y   G E N E R A L