

00-091

FIRE PROTECTION: STATEWIDE FIRE PREVENTION CODE ACT.

Locality that chooses to enforce Fire Prevention Code pursuant to Act may not selectively enforce open burning regulations prescribed by Code on geographic basis.

The Honorable Emily Couric
Member, Senate of Virginia
December 18, 2000

You ask whether a locality may selectively enforce the open burning regulations of the Fire Prevention Code only within certain areas of the locality.

Chapter 9 of Title 27, §§ 27-94 through 27-101 of the *Code of Virginia* enacts the "Virginia Statewide Fire Prevention Code Act."¹ Section 27-96 provides that the purposes of the Act "are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire." Section 27-97 empowers the Board of Housing and Community Development "to adopt and promulgate a Statewide Fire Prevention Code." Section 27-97 also provides that such Code "shall prescribe regulations." Additionally, "[l]ocal governments are hereby empowered to adopt fire prevention regulations that are *more restrictive or more extensive in scope* than the Fire Prevention Code," provided they do not affect certain matters not in issue here.²

The statutory scheme articulated in the Virginia Statewide Fire Prevention Code Act establishes concurrent authority of the state and a locality to enforce the Fire Prevention Code.³ The locality is not obligated to enforce the Code, but rather is given the option to do so.⁴ When a locality does opt for such concurrent authority, § 27-97 authorizes such locality to adopt fire prevention regulations that are more restrictive than the Code, not less so.

Moreover, § 27-98 provides that "[a]ny local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials." This statute gives a locality that has chosen to enforce the Code the option to enforce the Code in its entirety or to enforce only those provisions of the Code that relate to "open burning, fire lanes, fireworks, and hazardous materials."⁵ I am unaware, however, of any Code provisions that regulate open burning on a geographic basis.⁶

The Virginia Supreme Court has stated, "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁷ Accordingly, it is my opinion that a locality that has opted to enforce the Fire Prevention Code pursuant to the Virginia Statewide Fire Prevention Code Act may not selectively enforce the open burning regulations promulgated pursuant to the Code on a geographic basis.

¹Section 27-94.

²Section 27-97 (emphasis added).

³See 1986-1987 Op. Va. Att'y Gen. 208, 208-09.

⁴Note § 27-96, which provides for "optional local enforcement" of the Fire Prevention Code.

⁵Section 27-98.

⁶*Compare* BOCA National Fire Prevention Code § F-403.4.3 (prohibiting "*open burning* that will be offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous" but does not prohibit open burning on purely geographic basis). 1996 BOCA National Building Code (13th ed.).

⁷Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).