

Legal Foundation of Ohio Code Administration

Based on the Ohio Building Code

Introduction

Part I – Introduction

Part II – Historical Overview

Part III – Local Government Law

Part IV – State Government Law

Part V - Administration and Enforcement

Part VI – Ohio Administrative Laws

Part VII – Related Ohio Property Laws

Objectives

Upon completion of this course you will be better able to apply the following concepts:

- Historical Overview of Codes
- Local Government Law
- State Government Law
- Administration and Enforcement
- Ohio Administrative Laws
- Related Ohio Property Laws

Part I - Introduction

Based on the Ohio Building Code

Litigation Wave

- Within past 35 years, there has been a tremendous wave of litigation in the U.S.
- In 1984 a trend placed the code officials at the forefront of exposure to liability
- Liability is no longer an issue, but lawsuits are continually brought against building officials

Litigation Wave

- Adjudication – produces a decision, judgment, court decree or determination based on a hearing of the factual issues presented by both parties to a dispute

Concepts and Factual Situations

- Discusses state of the law on a national level
- Book is not binding law
- Consulted attorney must know about municipal law
- Building official should be aware of situations in which it is imperative to consult an attorney

Part II – Historical Overview

Based on the Ohio Building Code

Early Building Codes

- Earliest code developed in Babylonian Empire around 2000 B.C.
- Rome enacted regulations in 27 A.D, but burned in 64 A.D.

Early Building Codes

- London enforced the Assize of Buildings in 1189
 - Fire in 1212
 - Fire in 1666
- London Building Act
- Chicago Fire of 1871

Development of Modern Codes

- 1905, National Board of Fire Underwriters published *National Building Code* to serve as a guide
- 1927 Pacific Coast Building Officials' Conference published the *Uniform Building Code* (Still used today in western portions of the U.S.)

Development of Modern Codes

- 1945, the *Southern Standard Building Code* was published by Southern Building Code Congress International, Inc.
- 1950, the *Basic Building Code* now known as the *Boca National Building Code* was published by Building Officials and Code Administrations International

I - Codes

- 1997 – International Code Council initiates set of International Codes
- 2000 International Building Code (IBC)

Ohio Building Code

- 2007 Ohio Building Code (OBC) based upon the 2006 IBC
- 2007 OBC refers to:
 - OMC = 2006 IMC + IFGC
 - OPC = 2006 IPC
 - RCO = 2006 IRC
 - Energy = 2006 IECC

Part III – Local Government Law

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Forms of Local Government

- Counties
- Municipalities
- Townships
- Home Rule

Dillon's Rule

Municipal corporation has only powers which are:

- expressly granted to it by charter or other state legislation
- Implied or necessarily incident to the express powers
- essential and indispensable to the declared objects and purposes of the corporation

Dillon's Rule

- Expressed Power
- Implied Power
- Essential and Indispensable
- Enabling Legislation
- *Ultra Vires* Legislation

Home Rule Municipalities

- Charter is constitutionally derived from an authorization in a state's constitution
- Home Rule Charter – Considered a state law
- A great advance in the law of municipal corporations
- Freed local governments to regulate their own affairs as they see fit

Local Adoption of a Building Code

- Building official and municipal attorney work closely together to adopt a code
- There must be authority for the enactment of a building code at the state level
- The provisions of the enabling legislation must be followed precisely

Local Adoption of a Building Code

- A notice of intent must frequently be published in a newspaper of general circulation in the municipality
- The normal legislative process must be strictly followed
- Notices in newspapers and public hearings must be handled with care

Part IV – Administration and Enforcement

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Permit Issuance

- Most important step in the enforcement and administration of building codes
- Prior to the issuance of the permit, a written application is required from either the owner of the building or from the agent of the owner

Permit Issuance

- The applicant should be required to describe what he or she is attempting to do on the job site
- Should required complete information as to ownership or which contractor is doing the job
- An application should be specific and comprehensive

Permit Issuance

- The person whose job it is to approve or reject permit applications must be carefully instructed regarding his or her duties
- Once an application is approved and a permit is granted and construction has begun on a building site, it becomes difficult to revoke the issued permit

Permit Revocation

- If a permit is mistakenly issued, the building department will be able to revoke the permit without much trouble
- The building official determines whether or not a violation poses a threat to the safety of others

Inspection

- Construction or work with a permit shall be subject to inspection
- Public Records – Standard form should be used
- Training of Inspector

Inspection

- Ministerial Act – performed under the authority, policies and procedures of a supervisor
- First step is to check office records
- Every inspection must be documented and a copy should be kept
- Photographs or videos of any violation should be taken

Administrative Search Warrants

- Every provision of the legislation must be followed precisely
- Probable Cause – Must be adhered to

Plans Examination

- Most frightening area of potential liability
- A qualified expert must be in the area to perform the function of a plans examiner
- Division of plans examination must be thorough in everything it does

Civil Prosecutions

A typical complaint will require the following:

1. The name of person or entity to be charged
2. Designating the charge
3. Body of the charge
4. Date and time of the offense
5. Signature of the complaining witness
6. Notary or affidavit

Injunction Relief

- Temporary Restraining Order (Seeking One)
- Temporary Injunction
- Permanent Injunction

Handling Complaints

- The person who receives the complaint should obtain as much information as possible
- A standard procedure for handling the complaint should be established
- Although the complaints are public record, they should not be revealed over the phone

Evidence

- Hearsay Statement
- Photographs, videotapes, audiotapes
- Business records
- Warning letters, permits, applications, certified mail receipts

Administrative Guidelines

- The general rules should be reduced to a written form
- Each employee should be given a copy of the rule book
- If a questions is not covered, a new rule should be written

Administrative Guidelines

- A meeting should be held once a year to go over the rules in the book
- Serve as a legal function and make the decision-making process of the building official more legitimate
- Facilitates uniform administration of the code

Part V – Ohio Code Administration & Enforcement

Based on the Ohio Building Code

Distinction Between Governmental and Official Liability

- Building official = A person
- Municipality = A corporation
- Each may be sued
- The government itself cannot be sued

Distinction Between Governmental and Official Liability

- Government will provide defense counsel in most cases
- Government will indemnify the employee if a judgment is obtained by the injured party

Intentional Torts

- Intentional Torts – involve conduct that the actor intended to occur
- Negligence – involves conduct that was not intended to cause harm or injury

Absolute Immunity

- In California, public officials, including building officials, are immune from malicious prosecution cases
- California's act is extreme

Assault and Battery

- Battery – occurs when there is an intentional infliction of harmful or offensive bodily contact
- Assault – the willful attempt or threat to impose injury upon another when there is the apparent present ability and intent to injure

Trespass

- Liability attaches when a person intentionally enters on land under the possession of another
- Permission may be granted to enter the land for a particular purpose (License)
- Damages will be incurred if trespass is intentional

Trespass

- Attractive Nuisance
- Legal Privilege
- Administrative Warrant
- State Statute

Part VI – Ohio Administrative Laws

Based on the Ohio Building Code

Immunities

- If the building official is sued, he or she may be able to claim absolute immunity
- Qualified Immunity
- Rottkamp v. Young – a zoning official was sued for his failure to issue a building permit for a restaurant and was overruled via a declaratory judgment

State Tort Liability Acts

- Determine the amount of immunity that a government official will be afforded
- Building official will know for sure whether or not he or she will be immune in a given situation

Indemnification and Insurance

- Even if a building official loses a lawsuit, an ordinance is enacted that will indemnify the public official from any monetary loss he or she might suffer
- Errors and omission insurance – should not exclude coverage of civil rights actions

Part VII – The Role of the Witness

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Fact Witness

- Will be asked to describe circumstances that he or she has observed firsthand
- Subpoena – issued to order the appearance of a witness
- Subpoena duces tecum – issued to a witness to force him or her to bring specific documents or records to a hearing

Fact Witness

- The building official initiates the legal action
- The assigned inspector should take care to follow the normal departmental procedure
- The attorney acts as an advocate for the municipality

Guidelines for Witnesses

1. Always tell the truth.
 - Cross-Examination
 - Impeachment
2. Prior to testifying, review all relevant documentation.
3. Never volunteer anything on either direct examination or cross-examination.
4. If the answer to a question is unknown, say so.

Guidelines for Witnesses

5. Never answer a question until it is understood.
6. Always be polite.
7. Speak clearly and audibly.
8. Dress neatly and act appropriately.
9. Be prepared.
10. Wait for the judge's ruling to an objection.

Sequestration of Witnesses

- Rule of Sequestration – requires that any witness who has not yet testified and who is not a party must be excluded from the courtroom
- After testifying, the witness may stay and listen to the remainder of the proceedings
- Sequestered witnesses should avoid speaking to opposing counsel during court recesses and the like

Expert Witness

- Cannot normally express an opinion on a given topic
- They need only have some knowledge on a particular field beyond that held by an ordinary person
- The expert must meet with the attorney on a number of occasions

Expert Witness

- Hypothetical Question
- Needs to prepare for being qualified to testify as an expert
- Pretrial Discovery

Consulting Experts

- Not a witness
- Hired to help the attorney prepare for trial
- Useful during trial
- Can help attorney formulate questions for cross-examination