

N.D.A.G. Letter to Jansen (Feb. 12, 1985)

February 12, 1985

Mr. Jack Jansen
State Fire Marshal
State Capitol
Bismarck, North Dakota 58505

Dear Jack:

Thank you for your letter of January 22, 1985, concerning the definition of "building official" as that term is used in the Uniform Mechanical Code as referenced by the Uniform Building Code. Apparently, there is an individual who you do not believe is qualified to be a building official yet who is performing such duties and has approved heating devices.

North Dakota law, N.D.C.C. § 54-21.3-03, has adopted the 1982 Uniform Building Code and existing supplements. Although the Uniform Building Code makes references to the Uniform Mechanical Code, both of these codes are separate and distinct compilations of uniform laws. In other words, by simply adopting one, you have not adopted all of the other codes despite the fact that they may be referenced by that code which you have adopted.

This conclusion is supported by the definition of mechanical code as found within the Uniform Building Code, at page 46, and which states as follows:

MECHANICAL CODE is the Uniform Mechanical Code promulgated jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, as adopted by this jurisdiction. (Emphasis supplied)

Our review of the North Dakota Century Code does not indicate the Uniform Mechanical Code has been adopted by this jurisdiction. Thus, it is my opinion that the standards provided for in the Uniform Mechanical Code do not have legal effect within the state of North Dakota despite the fact that the Uniform Building Code may make reference to this code.

Therefore, the question of whether an individual is indeed a "building official" as that term is defined by the Uniform Mechanical Code thus enabling him to make a determination whether a heating unit is properly installed is a moot question within the state of North Dakota. The only requirement for a "building official" to make such a determination is found within the Uniform Mechanical Code, which does not have the force and effect of law within North Dakota at this time.

However, I would make mention of the fact that the term "building official" is defined by the Uniform Mechanical Code to include those officers charged with the administration and enforcement of that code or their deputies. In other words, the Uniform Mechanical Code makes no differentiation as to expertise or education in determining whether one is a building official. Instead, one looks to the responsibility for the administration and enforcement of the code to determine whether he is indeed a building official.

Sincerely,

Nicholas J. Spaeth

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