

## STATE BUILDING CODE INTERPRETATION NO. I-73-00

December 21, 2000

The following is offered in response to your letter in which you ask for formal interpretations of various questions regarding administrative procedures. You have asked that the responses be based on the 1994 State Building Code. My responses are limited to the State Building Code, since that is the only document I am authorized to interpret.

**Question 1:** “Must a building official issue a notice of violation prior to pursuing a criminal prosecution of a ‘violation?’”

**Answer 1:** Yes. Section 117.2 of the referenced code requires, through the use of the mandatory “shall”, that the building official serve a notice of violation on the party responsible for the violation. Section 117.3 goes on to outline the procedure to be followed if the notice of violation is not complied with promptly, which is to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to correct the violation.

**Question 2:** “Does a building official have authority to pursue a criminal prosecution for a ‘violation’ if the ‘violation’ is remedied promptly?”

**Answer 2:** No. If the illegal action or condition is discontinued immediately upon notification, and the violation abated or corrected, there would be no reason to continue prosecution of the violation. Again, section 117.3 provides for additional prosecution only if the violation is not corrected promptly.

**Question 3:** “Is failure to get a building permit a ‘violation’ of the building code?”

**Answer 3:** Yes. Section 111.1 of the referenced code states that it shall be unlawful to perform activities requiring a building permit without first filing an application for a building permit and obtaining the required permit therefor.

**Question 4:** “Should a building official issue a ‘notice of violation’ or a ‘stop work order’ if a building permit has not been obtained?”

**Answer 4:** It would be appropriate to issue either a notice of violation or a stop work order, or both, when work is being performed without a permit having been issued. The notice of violation, according to section 117.2 of the referenced code, is issued when work is being performed in violation of the provisions of the code, and shall direct the discontinuance of the illegal action and abatement of the violation. The stop work order, according to section 118.1, is issued when work is being prosecuted contrary to the

provisions of the code and directs that such work shall be immediately stopped. Since work without a permit is in violation of the provisions of the code *and* contrary to the provisions of the code, both the notice of violation and the stop work order are applicable. The choice of which course to pursue rests with the local building official.

**Question 5:** “If a ‘stop work order’ requires as its only condition that a property owner obtain a building permit and no work occurs between issuance of the stop work order and issuance of a building permit, does a building official have authority to pursue a criminal prosecution for working without a permit?”

**Answer 5:** No. Section 118.2 of the referenced code provides for penalties when work continues after the serving of a stop work order. If the condition of the stop work order to discontinue work and obtain a permit has been immediately complied with, the code does not provide for pursuance of additional penalties.