

**OPINION
72-316**

May 15, 1972 (OPINION)

Mr. W. Van Heuvelen

Executive Officer

State Department of Health

RE: State - Fire Marshal - Hospitals

This is in response to your letter in which you state the following:

"The Social Security Administration, which administers the Medicare program nationwide, has designated the National Fire Protection Association's Life Safety Code, 1967 Fire Protection Association's Life Safety Code, 1967 revision (commonly referred to as NFPA No. 101, 1967) as the basis for surveying hospitals from the fire safety point of view. They have requested an Attorney General's opinion as to which state agency is the fire authority in North Dakota for hospitals and related medical facilities.

"Section 18-01-02 North Dakota Century Code seems to give the Fire Marshal and Deputy Fire Marshal the overall authority.

"Section 23-01-03, subsection 4, North Dakota Century Code seems to give the Health Council the specific authority for fire protection measure as it relate to hospitals and related medical institutions.

"Regulation 23-16-81 'Rules and Regulations for Hospitals and Related Institutions in North Dakota' published by the North Dakota State Department of Health, effective November 2, 1970, refers to some precautions which should be exercised in hospitals and related institutions as they pertain to fire protection. Beyond that, the State Health Council has adopted by reference the Fire Marshal's regulations entitled 'Fire Protection Standards for Nursing, Maternity and Boarding Care Homes and Minimum Requirements for Hospitals 1954-1961,' as amended."

You then ask which state agency should be designated to the Social Security Administrator as the fire authority in North Dakota for hospitals and related institutions. As you have indicated, section 23-01-03 as pertinent to the subject matter provides as follows:

"POWERS AND DUTIES OF THE HEALTH COUNCIL. The health council shall:

* * *

4. Provide for the development, establishment and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for

the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures and preservation of medical records; provided no regulation shall be made as to building construction of existing medical hospitals save in relation to safety factors; and

* * *"

This section places an affirmative obligation upon the Health Council to provide for the development of rules and regulations setting up standards for medical institutions, hospitals, etc., which will require the implementation of fire protection measures among other things. This responsibility is in the nature of supervising authority.

We would assume that this responsibility was vested with the Health Council because it is the licensing authority of such institutions. The Health Council could compel compliance with suspension or revocation of license as need be.

This authority to grant or deny a license is set up in Chapter 23-16. Under this chapter, the State Health Officer with the approval of the Health Council (section 23-16-06) may after a hearing suspend or revoke licenses on the grounds that the practices at the institution are detrimental to the health or safety of the patients. This language is sufficiently broad enough to include fire protection measures. The licensing authority is also in a position to examine plans before buildings are constructed or substantially altered. The approval of the licensing authority is required. The same licensing authority may also make inspections. This clearly indicates that the licensing authority has the necessary power and authority to compel the implementation and adherence to fire protection measures for the welfare and safety of patients and other persons in such institutions.

The duties of the Fire Marshal are set out in section 18-01-02 which provides as follows:

"DUTIES OF FIRE MARSHAL AND DEPUTY FIRE MARSHAL. The state fire marshal and his deputy or deputies shall enforce all the laws of the state providing for:

1. The prevention of fires;
2. The storage, sale, and use of combustibles and explosives;
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment;
4. The means and adequacy of exists in case of fires from churches, schools, hospitals, hotels, halls, theaters, amphitheatres, and all other places in which numbers of persons congregates from time to time for any purpose; and
5. The suppression of arson and the investigation of the cause

and origin of fires."

It is his responsibility to see that all laws are enforced with reference to fire protection, safety, etc. It should be noted that under subsection 4 of the same section, that it is his responsibility to see that means and adequacy of exits are provided for in hospitals and a number of other places. The fire marshal's primary function and duties pertain to matters affecting the health, welfare and safety of persons and property as same relate to protection from fire.

Under these statutory provisions the primary responsibility as to structure and such matters, the fire marshal is charged with this responsibility. He is in this respect the fire authority for hospitals and related institutions. The licensing authority has a responsibility to see that certain matters are implemented and for that matter that the regulations or directions of the fire marshal where same are within the provisions of law are carried out or implemented.

In direct response to your question, it would be our opinion that the State Fire Marshal is the person that should be designated as the fire authority in North Dakota for hospitals and institutions. In arriving at this conclusion, we recognize that the licensing authority has responsibilities and in certain areas has concurrent jurisdiction.

HELGI JOHANNESON

Attorney General