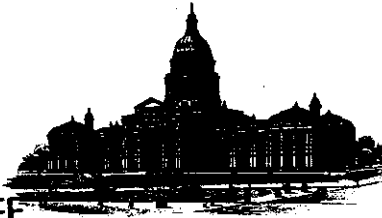


TEXAS HOUSE OF REPRESENTATIVES

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OPINION COMMITTEE



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FRANK J. CORTE JR.

RQ-0256-GA

August 9, 2004

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43871-04
I.D. # 43871

Dear General Abbott:

As chairman of the House Committee on Defense Affairs and State-Federal Relations, I respectfully request your opinion on the following issue:

Whether Section 214.212(c)(1), Local Government Code, which permits a municipality to adopt local amendments to the International Residential Code, limits the municipality to adopting only amendments that are equivalent to or more stringent than the standards of the International Residential Code.

Senate Bill 365, enacted in 2001 during the 77th Regular Session of the Texas Legislature, added Subchapter G, Chapter 214, Local Government Code, which adopted the International Residential Code as it existed on May 1, 2001, as a municipal residential building code throughout the state for one- and two-family dwellings. The intent of that legislation was to provide uniformity in residential construction. To allow for future changes in the International Residential Code, Section 214.212, Local Government Code, provides that a municipality may establish procedures "to adopt local amendments to the International Residential Code." This wording has been interpreted inconsistently by different municipalities in adopting local amendments to various sections of the International Residential Code. As a result, a clarification of the meaning of Section 214.212(c)(1), Local Government Code, is necessary.



DISTRICT 122

COMMITTEES: CHAIR-DEFENSE AFFAIRS AND STATE-FEDERAL RELATIONS · JUDICIAL AFFAIRS

E-Mail: frank.corte@house.state.tx.us

Furthermore, House Bill 730, enacted in 2003 during the 78th Regular Session, added Title 16, Property Code, which established the Texas Residential Construction Commission and required that commission, by rule, to adopt limited statutory warranties and building and performance standards for residential construction throughout the state. Sections 430.001(c) and (d), Property Code, require for residential construction in municipalities that the warranties and standards must substantially comply with the applicable version of the International Residential Code as provided by Section 214.212, Local Government Code. Chapter 428, Property Code, provides for a dispute resolution process that requires an inspector to make a recommendation, in part, based on whether the home was built to the standards, which are based on Section 214.212, Local Government Code. A failure to build to those standards is considered a construction defect. Accordingly, a clarification of Section 214.212 will also help the implementation of this dispute resolution process.

I have included a letter prepared by the Texas Legislative Council for Representative Anna Mowery that discusses the issue of the legislative intent of Section 214.212, Local Government Code. The analysis in the letter concludes that "it seems apparent that the legislature's intent was to authorize a municipality to adopt only amendments that are equivalent to or more restrictive than the standards provided by the International Residential Code."

I have also included audio tapes of the house and senate floor debates and the senate committee debate for your review. A house committee debate audio tape does not exist. In listening to those debates, I believe establishing a uniform minimum level of residential building standards was the prevailing intent of the legislation. With this in mind, I respectfully request an opinion construing the meaning of Section 214.212(c)(1), Local Government Code. See Section 311.023, Government Code.

Thank you for your guidance on this matter and your continued service to the state.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Corte, Jr.", written in a cursive style.

Representative Frank J. Corte, Jr.
Chair, House Committee on Defense Affairs
and State-Federal Relations

Enclosures



TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128
Telephone: 512/463-1151



DAVID DEWHURST
Lieutenant Governor
Chairman

STEVEN R. COLLINS
Chief Legislative Counsel
Executive Director

TOM CRADDICK
Speaker of the House
Vice Chairman

September 19, 2003

The Honorable Anna Mowery
State Representative
State Capitol
Room 1N.05

Re: Legislative intent of Senate Bill 365, 77th Regular Session

Dear Representative Mowery:

Senate Bill 365, enacted in 2001 during the 77th Regular Session of the Texas Legislature, added Subchapter G, Chapter 214, Local Government Code, which adopted the International Residential Code, as it existed on May 1, 2001, as a municipal residential building code throughout the state to protect public health, safety, and welfare. *See* Sec. 214.212(a), Loc. Gov't Code. Section 214.212(b), Local Government Code, provides that the International Residential Code "applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality." In addition, Section 214.212(c), Local Government Code, provides that a municipality may establish procedures to adopt local amendments to the International Residential Code. You have asked us to research and review the legislative intent of Senate Bill 365 to determine whether the intent of the legislature in adopting Section 214.212(c), Local Government Code, was to require a municipality that adopts a local amendment to adopt only an amendment that is equivalent to or more restrictive than the standards of the International Residential Code as adopted under Section 214.212(a), Local Government Code.

A review of the floor discussion of Senate Bill 365 in both the senate and house chambers indicates that the legislature adopted the bill to uniformly bind municipalities statewide to the standards of the International Residential Code. It appears, however, that the legislative intent, as expressed in senate floor discussion, was to permit municipalities to adopt only amendments that are more restrictive than the standards provided by the International Residential Code.¹ This approach

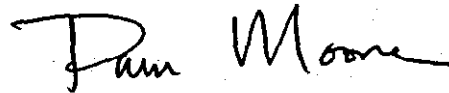
¹This issue was specifically discussed during the senate floor debate on consideration of Senate Bill 365 on second reading on April 2, 2001.

The Honorable Anna Mowery
September 19, 2003
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appears consistent with the intent as expressed in the wording of Section 214.212(a), Local Government Code, which provides: "*To protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2001, is adopted as a municipal residential building code in this state*" (emphasis added). One would logically conclude that the legislature did not uniformly adopt the standards of the International Residential Code intending to allow municipalities to undermine those standards by adopting local amendments that are less restrictive than the standards provided by that code. Accordingly, although Section 214.212(c), Local Government Code, permits a municipality to establish a procedure to adopt local amendments, it seems apparent that the legislature's intent was to authorize a municipality to adopt only amendments that are equivalent to or more restrictive than the standards provided by the International Residential Code as adopted under Section 214.212(a), Local Government Code.

Please contact me if I can provide additional assistance.

Sincerely,

A handwritten signature in black ink that reads "Pam Moore". The signature is written in a cursive, flowing style.

Pam Moore
Legislative Counsel

03M121