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OPINION	:	No. 82-304
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of	:	<u>JUNE 24, 1982</u>
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THE HONORABLE JOHN DOOLITTLE, STATE SENATOR FOR THE THIRD DISTRICT, has requested an opinion on the following questions:

1. Does the state have an affirmative duty under section 17952 of the Health and Safety Code to ensure that the uniform building codes are being complied with?
2. Does section 18945, subdivision (a) of the Health and Safety Code permit a person who has been adversely affected by the nonenforcement of building codes to appeal to the State Building Standards Commission? Would inaction on the part of the state to ensure enforcement itself constitute an "omission" within the meaning of that section?
3. Can a person who disputes the findings of state building code inspectors appeal to the State Building Standards Commission pursuant to section 18945, subdivision (a) of the Health and Safety Code?

CONCLUSIONS

1. Under appropriate circumstances, the state does have an affirmative obligation under section 17952 of the Health and Safety Code to ensure that the uniform building codes are being complied with.

2. Section 18945, subdivision (a) of the Health and Safety Code does not permit a person who has been adversely affected by the nonenforcement of building codes by a local agency to appeal to the State Building Standards Commission. Inaction on the part of the state to assume enforcement itself would not constitute an "omission" within the meaning of that section.

3. A person who disputes the findings of state building code inspectors may appeal to the State Building Standards Commission pursuant to section 18945, subdivision (a) of the Health and Safety Code.

ANALYSIS

Background

The questions presented require an analysis of the State Housing Law (Health & Safety Code, § 17910 et seq.) and its interrelationship with the State Building Standards Law (Health & Safety Code, § 18901 et seq.).¹ We believe that a proper understanding and resolution of the questions require that we briefly trace the history of each of these laws so that their main purposes may be understood and the code sections which are the subject of the questions presented may be placed in their proper perspectives.

The State Housing Act was initially enacted in 1917 and codified as part of the Health & Safety Code in 1939 as sections 15000-17902 (see 26 Ops.Cal.Atty.Gen. 71, 73 (1955) for a brief historical summary to that date). Its purpose was and is to provide a detailed system of regulation of the construction and maintenance of apartment houses, hotels, motels and dwellings. (*Ibid.*)

As originally codified, and until 1961, the state statutes themselves contained the detailed building regulations required for the regulated buildings. They, however, required generally that the actual enforcement of the state law should be primarily the responsibility of city and county officers such as local building departments, housing departments, health departments or other appropriate local officials. (Former §§ 15250-

¹ All section references are to the Health & Safety Code unless otherwise indicated.

15255.)² It also provided that cities and counties could if they desired "impose[] restrictions greater than those imposed" by state law. (Former § 15153.)

In 1961 a number of major changes occurred in the State Housing Act. After 1961 the law was to apply in all parts of the state.³ After 1961 the act no longer provided the detailed building regulations. Such regulations were to be adopted by the Division of Housing, Department of Industrial Relations using uniform codes such as the uniform building, plumbing and electrical codes as guidelines. As with the old act, cities or counties could if they desired enact local regulations. The act now permitted them to impose standards *equal to* as well as greater than those imposed by state regulations. Also, as with the old act, primary enforcement responsibilities of *state* regulations were to repose with cities and counties. Under the new act, however, the first "appeals" procedures were to be found. Section 17925 now provided that any person or entity could oppose the application of state law to a particular area because of local conditions by appealing to a *local* appeals board, whose decision would be controlling on the state.⁴ The act also established a State Housing Appeals Board to hear appeals as to the application of any rule of the *Department of Industrial Relations* where it was alleged that application or enforcement by the department would be erroneous or unlawful. Appeals were, however, *to be submitted through the designated local agency*. Furthermore, the law provided that the state appeals board "shall not . . . hear any appeals regarding local regulations which are equal to or greater than those prescribed by" the state act, thus limiting appeals to state action with respect to state regulations (§ 17937 as enacted by Stats. 1961, ch. 1844, § 8, p. 3922; see now § 17930). In short, appeals were to be taken only as to the application of *state* regulations by the state Division of Housing. No appeals procedure from local application of local ordinances was contemplated. We so concluded in 41 Ops.Cal.Atty.Gen. 182 (1963). In that opinion it was also concluded that then section 17937 (now § 17930) did not prohibit an appeal by a local agency as to the application of state law. We noted that the fact that the section required the appeal to be submitted through the local agency indicated that the legislation contemplated that the local agency might wish to join in the appeal as to the application of state law.

At this juncture, 1961, section 17952, which is the subject of question number one of this opinion, was enacted. It originally provided as follows:

² Originally, enforcement of regulations pertaining to apartment houses and hotels did not apply in unincorporated territory unless otherwise provided by the board of supervisors. This fact, however, is not important to our historical review.

³ See note 2, *ante*.

⁴ For a more detailed discussion of these changes made by the 1961 law, including a renumbering of the law to its present format, see 40 Ops.Cal.Atty.Gen. 205 (1962).

"17952. In the event of nonenforcement of this part or the rules and regulations promulgated pursuant thereto *or of any ordinance or local regulation adopted pursuant to Section 17951*, the provisions of this part and the rules and regulations promulgated thereunder shall be enforced by the department in any such city or county after the department has given written notice to the governing body of such city or county of a violation of this part or the rules or regulations promulgated thereunder and the city or county has failed to initiate proceedings to secure correction of the violation within 30 days of the date of such notice." (Emphasis added.)

Accordingly, as originally enacted, section 17952 addressed not only the nonenforcement of state regulations, but the nonenforcement of local ordinances adopted under section 17951, which permitted the enactment of ordinances or regulations imposing restrictions equal to or greater than those imposed by "state regulations." (Former § 17951 as added by Stats. 1961, ch. 1844, § 8, p. 3922.) In short, in the event of the breakdown of local enforcement of building regulations applicable to apartments, houses, hotels and dwellings, whether imposed by state regulation or local ordinance, the state was to assume enforcement.

For our purposes the next major evolution of the State Housing Law occurred in 1970.⁵ (Stats. 1970, ch. 1436.) The reason for the 1970 amendments was to foster uniformity of building codes throughout the state in order to reduce costs and increase efficiency in the construction industry, while permitting local governments to make necessary modifications for local conditions. Accordingly, under the 1970 law, and now, the *state* is generally *required* to adopt as its rules and regulations with respect to the construction and alteration of apartment houses, hotels and motels and dwellings the various uniform codes such as the uniform building, plumbing, and electrical codes. (§ 17922.) Also, since 1970 the law has contemplated that cities and counties also be *required* to adopt the same standards by ordinance as are imposed by state regulations (§ 17958) with only such local modification as are "reasonably necessary" and are supported by specific findings of the local agency. (§§ 17958.5, 17958.7; see also, generally 55 Ops.Cal.Atty.Gen. 157 (1972).)⁶

In 1972, there were several "clean-up" amendments of particular note to our questions. Section 17930 (prior § 17937), which provides the "appeals procedure" to the

⁵ In the interim, the Department of Housing and Community Development took over the duties of the Division of Housing of the Department of Industrial Relations. (See Stats. 1968, ch. 1018.)

⁶ In 54 Ops.Cal.Atty.Gen. 87 (1971) this office concluded that local agencies need not amend or repeal preexisting local building regulations adopted pursuant to the pre-1970 statute. See also, *Baum Electric Co. v. City of Huntington Beach* (1973) 33 Cal.App.3d 573, 584, fn. 15.

State Commission of Housing and Community Development from the application of *state* regulations, was amended to provide that no appeal could be taken from local regulations adopted pursuant to sections 17958.5 and 17958.7, which sections now permitted the adoption of necessary local modifications as discussed above. (Stats. 1972, ch. 1224, § 2, p. 2363.) The law still, however, provided that appeals should be submitted through the local agency. Section 17952, *supra*, was also significantly amended. With respect to the State's duty to assume enforcement of building regulations in the event of local nonenforcement of such regulations, the reference to the nonenforcement of *local* ordinances or regulations was deleted.

Thus, as of 1979, when the State Building Standards Law was comprehensively revised (as will be developed *post*), the State Housing Law evolved to the point where it essentially provided:

1. The State Commission of Housing and Community Development was to adopt rules and regulations for the construction and alteration of hotels, motels, apartment houses and dwellings which imposed substantially the same requirements as are found in the various uniform building codes (§§ 17921, 17922);

2. Cities and counties were required to adopt equivalent regulations which could be modified as reasonably required by local climatic, geographical or topographical conditions. However, local regulations adopted prior to the 1970 amendments were still valid and need not have been repealed. (§§ 17958, 17958.5, 17958.7; see also, generally, 60 Ops.Cal.Atty.Gen. 234 (1977); 57 Ops.Cal.Atty.Gen. 443 (1974); 39 Ops.Cal.Atty.Gen. 324 (1962));

3. Cities and counties, through their building departments, housing departments, health departments or other appropriate officers, were to enforce the provisions of the State Housing Law, and the rules and regulations promulgated pursuant to that law, although such local agencies could contract with the Department of Housing and Community Development for assistance in enforcement (§§ 17960-17967; see also, generally, Atty.Gen.Unpub.Opns. I.L. 73-33; I.L. 69-126);

4. In the event of nonenforcement by a city or county of the State Housing Law, or the rules and regulations promulgated pursuant thereto, the Department of Housing and Community Development, after appropriate notice to the city or county, was to ("shall") enforce the rules and regulations therein;

5. Any person or entity could appeal to the *local* appeals board as to the application to them of any state rule or regulation because of local factors or conditions, and the decision of the appeals board was to be final; and

6. Any "person" could appeal to the *State* Commission of Housing and Community Development as to whether the application or enforcement of the commission's rules or regulations by the *State* Department of Housing and Community Development was "erroneous or unlawful," but no appeal would lie to the commission regarding local modifications adopted or permitted by sections 17958.5 and 17958.7. A local agency could also join in that appeal. (§ 17930.)⁷

With this background on the State Housing Law, we now proceed to a discussion of the State Building Standards Law.

The State Building Standards Law had its genesis in 1953 by the addition of sections 18900-18909. (Stats. 1953, ch. 1500, p. 3112 et seq.) As originally enacted, the law provided for the establishment of a State Building Standards Commission whose duty was to publish a *single code* of all the administrative regulations of all state agencies which adopt building standards. The primary purpose was to eliminate duplication, conflict and overlap in this type of state regulations. As the law evolved, the commission was given greater powers with respect to approving or disapproving building standard regulations of state agencies in pursuance to that end. For example, as of 1979 when the law was comprehensively revised, the commission had been given the power to require substantive changes in building standards, and to even adopt appropriate interim building standards if the responsible state agency failed to do so. (See former §§ 18907, 18911.) However, as of 1979 the law was still a relatively simple law in its scope and content. (See also, generally, 58 Ops.Cal.Atty.Gen. 459 (1975); 49 Ops.Cal.Atty.Gen. 82 (1967); 43 Ops.Cal.Atty.Gen. 27, 32 (1964).)

Insofar as any appeals were provided for in the *State Building Standards Law* until 1979 when it was comprehensively revised, section 18910 of *that* law provided for such appeals. That section is significant for our inquiry since it is essentially the origin of *present* section 18945, which we will be required to interpret herein as it interrelates with the present State Housing Law. Section 18910 provided:

"Any agency, person, firm or corporation that is or may be affected by any regulation, rule, *omission* or decision of any state agency, relating to duplication, conflict, or overlapping of building regulations, nomenclature or arrangement not conforming to that adopted by the commission or regulations or rules not written in conformance with standards required under Section 18911 may ask the commission for interpretation or reconsideration of such rule or regulation.

⁷ In 1968 the functions of the State Housing Appeals Board were taken over by the State Commission of Housing and Community Development.

"Any request for interpretation or reconsideration shall be in writing to the commission, and the decisions of the commission shall likewise be in writing.

"The commission may designate a committee to investigate and report to the commission its findings or any such request for interpretation or reconsideration filed with the commission.

"After such interpretation by the commission, proceedings for appeal shall be conducted in accordance with the provisions of the Administrative Procedure Act." (Emphasis added.)

Former section 18911 required that "[a]ll building regulations be written, administered, and interpreted on a performance basis consistent with state and nationally recognized standards for building construction as set forth by the commission. . . ." Accordingly, section 18910 permitted appeals with respect to actions of *state* agencies, and with respect to certain enumerated matters, including "omissions," which clearly went to the *substance* of the building standards of the particular agency. Although the term "omission" was used therein, "omission" would appear to have meant the failure to properly *adopt* a building standard. It did not appear to address an "omission" constituting the lack of *enforcement* of an otherwise properly adopted regulation.

In sum, as of 1979, the Building Standards Law was concerned with the *substantive* aspects of building standards which are required to be adopted. It was not concerned with whether such building standards, when properly adopted, were *enforced*. This conclusion is in conformity with the basic purpose of *that* law, that is, to have a *single* code of building standards available to interested parties.⁸

With this background both as to the State Housing Law and the State Building Standards Law, we now proceed to the questions presented for resolution herein.

1. Does the State Have an Affirmative Duty to Ensure that the Uniform Building Codes are Being Enforced?

In 1979 the State Building Standards Law was comprehensively revised through repeal and reenactment by chapter 1152, Statutes of 1979. A perusal of the act, as reenacted, demonstrates that its expansion is mostly procedural and explanatory in nature, and that its basic purpose remains the same as when the law was originally enacted, that is,

⁸ Such single code, that is the State Building Standards Code, is found in title 24 of the California Administrative Code.

to ensure that a single code is adopted and published containing all the building standards required to be adopted by all state agencies. Thus, section 18931 sets forth the basic duties of the State Building Standards Commission as follows:

"The commission shall perform the following:

"(a) In accordance with Section 18930 and within 120 days from the date of receipt of adopted standards, review such standards of adopting agencies in order to approve, return for amendment with recommended changes, or reject building standards submitted to the commission for its approval. . . .

"(b) Codify, including publish, all building standards of state agencies and statutes defining building standards into one State Building Standards Code.

"(c) Resolve conflict, duplication, and overlap in building standards in the code.

"(d) Ensure consistency in nomenclature and format in the code.

"(e) *In accordance with Section 18945, hear appeals resulting from the administration of state building standards.*

"(f) Adopt such procedural regulations as it deems necessary to administer this part." (Emphasis added.)

Another purpose of chapter 1152, Statutes of 1979 was apparently to clarify terminology by making specific reference in numerous other laws to "building standards" and the "State Building Standards Code" where reference had been previously only to "standards," or "rules and regulations." See, for example, section 17952 of the State Housing Law *post*, as amended, two previous versions of which have already been discussed *ante*.

The first question presented for resolution is whether the state, acting through the Department of Housing and Community Development, has an affirmative duty to ensure that the uniform building codes are being complied with.

As we view the question, such a duty could be characterized as either (1) a duty to actually police the activities of cities and counties with respect to enforcement of the uniform codes, or (2) a duty to supplant cities and counties with respect to their

enforcement duties when there has been a breakdown in local enforcement. We believe that the proper conclusion to both aspects of the question flows from the history of the State Housing Law since its inception. This history, already discussed at length, has been that cities and counties have the *primary* enforcement responsibilities of the uniform codes. As noted by the court in *Baum Electric Co. v. City of Huntington Beach*, *supra*, 33 Cal.App.3d at pp. 580-581:

"Petitioner contends, however, that the Department of Housing and Community Development (Department) is the only agency empowered to disapprove use of code covered material because it is the body empowered to administer and enforce the rules and regulations. While the Department is vested with *supervisory* powers over the administration and enforcement of building regulations, the day-to-day administration and enforcement of the regulations are vested in the local building department. Section 17921 provides '*except as hereinafter provided*' the Department shall enforce the rules and regulations. (Italics supplied.) Section 17960 under chapter 5 entitled 'Administration and Enforcement' provides '[t]he building department of every city or county shall enforce within its jurisdiction all the provisions of this part and rules and regulations promulgated thereunder . . .' Moreover, the act provides that enforcement by the Department shall not be initiated except for nonenforcement by a local entity and then only after notice, opportunity to be heard, and decision by the commission. (§ 17952.)" (Emphasis in original.)

(See also, §§ 17960-17967.)

With respect to whether the Department of Housing and Community Development must police the activities of local enforcement agencies, we find nothing in the State Housing Law which sets forth such a mandate. We do note, however, the provisions of section 17967 as added to that act in 1979 (Stats. 1979, ch. 1152, § 89, pp. 4273-4274), which provisions were formerly contained in section 1476 of the Labor Code. Section 17967 states:

"The department *may* examine the records of the various city, city and county, or county departments charged with the enforcement of building standards published in the State Building Standards Code and the other rules and regulations promulgated pursuant to the provisions of this part and secure from them the reports and copies of their records at any time. The department shall pay the cost of duplicating such records." (Emphasis added.)

The use of the permissive "may" in this section (see § 16) indicates to us, and we so conclude, that the extent to which the Department of Housing and Community Development will actually police the enforcement activities lies in the sound discretion of the department.

As to the second aspect of the question, that is, whether the department has a duty to supplant local enforcement of the uniform codes when there is a breakdown in enforcement, we turn to the provisions of section 17952, two previous versions of which have already been discussed, *ante*, and which was amended by Statutes of 1979 to read:

"(a) In the event of nonenforcement of this part, or the building standards published in the State Building Standards Code, or the other rules and regulations promulgated pursuant to the provisions of this part, such provisions, building standards or other rules and regulations shall be enforced by the department in any such city or county after the department has given written notice to the governing body of such city or county or fire protection district, as the case may be, of a violation of this part, such building standards, or other rules or regulations promulgated pursuant to the provisions of this part and the city or county has failed to initiate proceedings to secure correction of the violation within 30 days of the date of such notice. The city or county or fire protection district may request a hearing before the commission pursuant to Section 17930 within such 30 days to show cause for nonenforcement. Enforcement by the department shall not be initiated until the decision of the commission, adverse to the city or county or fire protection district, is rendered.

"(b) In the event that a city, or county, or city and county, or fire protection district fails to initiate proceedings to correct a specific violation of the rules and regulations or building standards adopted pursuant to Section 17920.7 and in the event of enforcement of such rules and regulations or building standards by the department pursuant to subdivision (a) of this section, the costs incurred by the department for such enforcement shall be borne by such city, or county, or city and county, or fire protection district. The department may assess fees to defray the costs of enforcement, thereby reducing the cost to be borne by the city, county, city and county, or fire protection district, but the department need not assess such fees and may not require the city, county, city and county, or fire protection district to assess fees to offset department costs."⁹

⁹ Subdivision (b) was added by Statutes of 1979, chapter 62. Fire protection districts are responsible for the enforcement of building standards pertaining to fire protection and fire safety

This office has had the occasion to construe a statute strikingly similar to section 17952 found in the Mobile Home Park Acts, sections 18200 et seq. Section 18300 in part is such similar provision.¹⁰ With respect to section 18300 as it read in 1970 this office was asked whether the Department of Housing and Community development was required to give notice of each specific violation to assume enforcement responsibilities, or whether it could assume such responsibilities because of a general lack of enforcement by the local agency. In responding to these questions, we stated in part:

"Absent the facts of an actual instance of local nonenforcement, only general principles can be stated. It can be inferred though that the legislature in enacting section 18300, intended to effect an arrangement which would be

within their respective areas. Section 17920.7 pertains to the adoption and enforcement of fire regulations and standards, or their equivalents, by the State Fire Marshal or by cities and counties respectively.

Since the law contemplates that cities and counties shall adopt by ordinance the same rules and regulations and building standards as are adopted by the Commission on Housing and Community Development pursuant to sections 17921 and 17922, that is, essentially the Uniform Codes (§ 17958), section 17952 is not clear as to whether the "nonenforcement" referred to therein applies to the state standards per se or applies to the ordinances adopting those standards. We assume the latter to be the case. Otherwise if all cities and counties had enacted such ordinances, the state would not take over in case of "nonenforcement," leaving a void. (But see note 6, *supra*.) This conclusion would also seem to be correct since when section 17958 was enacted in 1970 to make local ordinances presumptively mandatory, section 17952 was also amended to omit any reference to the state assuming enforcement because of the local nonenforcement of *local ordinances* imposing equal or greater standards than state regulations. (But see 60 Ops.Cal.Atty.Gen. 83 (1977): local ordinance not "rules and regulations" promulgated pursuant to act for misdemeanor violation purposes.)

¹⁰ Section 18300 now provides in part:

"(d)(1) In the event of nonenforcement of the provisions of this part, the building standards published in the State Building Standards Code relating to mobilehome parks, travel trailer parks, recreational trailer parks, temporary trailer parks, incidental camping areas, and tent camps, or the other regulations adopted pursuant to the provisions of this part by a city, county, or city and county, the department shall enforce the provisions of this part, the building standards published in the State Building Standards Code relating to mobilehome parks, travel trailer parks, recreational trailer parks, temporary trailer parks, incidental camping areas, and tent camps, and the other regulations adopted pursuant to the provisions of this part in any such city, county, or city and county after the department has given written notice to the governing body of such city, county, or city and county setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of such notice."

compatible with continued state-county cooperation in the enforcement of the mobilehome park law.

"Section 18300 requires that the department give written notice to the city or county involved of the violations of the statute or regulations *which have come to its attention*, and for which the city or county has failed to take appropriate enforcement action.

"Where the city or county fails to take corrective action, within thirty days of the date of the notice, the statute requires that the department shall appropriately enforce the statute and the regulations.

"In context, the legislature intended, upon the event of local non-enforcement, that the department assume enforcement responsibility over the particular violations described in the written notice. The scope of the notice therefore delimits the scope of the department's assumption of enforcement authority.

"By this means, both the city or county involved, and the department, will know of the scope of their respective enforcement authority, both before and after the department's assumption of enforcement power." (Atty.Gen.Unpub.Op. No. I.L.71-9, emphasis added.)

And subsequently, in Attorney General's Unpublished Opinion I.L. 75-128, we also stated in part with respect to section 18300 of the Mobile Home Parks Act:

"The word 'shall,' when used in a statute, indicates the legislative intent to make the statutory requirement mandatory. Sec. 18; *National Automobile and Casualty Insurance Co. v. Garrison*, 76 Cal.App.2d 415, 417 (1945). Accordingly, *once the Department determines that the local governmental agency has failed to take appropriate enforcement action*, the Department is under a duty to notify the local agency that after thirty days the Department will resume enforcement of the Act within the jurisdiction affected. *County of San Bernardino v. La Mar, supra*, 271 Cal.App.2d 718, 721; see also Indexed Letter No. 71-9, dated December 11, 1970, to Donald F. Pinkerton, Director, Department of Housing and Community Development."

"....."

". . . Although the Legislature gave the cities and/or counties original jurisdiction over mobilehomes and mobilehome accessory buildings or structures located outside of mobilehome parks, it could not have intended that if the cities and/or counties failed to enforce the Act properly that there should then be no enforcement. A basic rule of statutory construction is that the intent of the Legislature should be ascertained so as to effectuate the purpose of the law. Each statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. *Select Base Materials Inc. v. Board of Equalization*, 51 Cal.2d 640, 645 (1959).

"Since the statute in question involves the enforcement of the entire act, the obvious intention of the Legislature in this instance is that in the event of nonenforcement of the Act by a city and/or county, the Department shall enforce the Act after appropriate notice. We believe that such a practical construction will lead to wise policy rather than to mischief or absurdity. See *City of El Monte v. City of Industry*, 188 Cal.App.2d 774, 782 (1961)."

Our interpretation of section 18300 "may be looked to as a guide to the proper construction or interpretation of" section 17952. (*Frediani v. Ota* (1963) 215 Cal.App.2d 127, 133.) Accordingly, we conclude that section 17952 places upon the Department of Housing and Community Development a mandatory duty to enforce the uniform building codes when the responsible local agencies fail to enforce them. However, what does this mean?

Reading section 17967 *supra* together with section 17952 and our above unpublished opinions, we conclude that when the requisite "nonenforcement" comes to the attention of the department either through its own examination of local enforcement activity, or otherwise, and the other conditions of section 17952 are met, the department *then* has an affirmative duty to "enforce" the uniform building codes. However another question remains. What is the requisite "nonenforcement"?

In the case of a complete breakdown in enforcement by the responsible local entity in the enforcement of the uniform building codes, the existence of the requisite "nonenforcement" would be clear.¹¹ However, short of a complete breakdown, we believe

¹¹ Such is analogous to the situation contemplated in section 17965, which provides:

"Where there is no local enforcement agency charged with the enforcement of this part pursuant to Section 17964, and to the extent that enforcement responsibility is not assigned to a local enforcement agency pursuant to Section 17960, 17961, or 17961.5, the department shall enforce all the applicable provisions of this part, the building

that the Department of Housing and Community Development must have some discretion in deciding whether such nonenforcement exists to warrant state intervention. The State Housing Law contemplates that the uniform codes shall be enforced locally. Furthermore, local agencies would normally have an appeals procedure from the initial determination made with respect to the administration or enforcement of the codes through a local appeals board. Such body has been contemplated by section 17925 for decades with respect to whether state standards should apply because of unique local conditions. Furthermore, court action is also available with respect to the action of local officials either through traditional or administrative mandamus. (Code Civ. Proc., §§ 1085, 1094.5.) In short, we believe the Legislature never intended that the state should become involved in every question as to the proper application or "enforcement" of the codes in every city or county as to every construction project, thus making the state in essence the local appellate body. The enormity and magnitude of such a task would place a staggering burden on the state. Statutes should be given a reasonable and workable interpretation to accord with the evident legislative intent. (*Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 802; *County of Alameda v. Kuchel* (1948) 32 Cal.2d 193, 199.)

In short, the Department of Housing and Community Development, in order to retain its "supervisory role" with respect to enforcement of the uniform codes (*Baum Electric Co. v. City of Huntington Beach*, *supra*) must, in our view, have discretion to determine whether there is such "nonenforcement" to trigger its enforcement duties. (Cf. *Boyne v. Ryan* (1893) 100 Cal. 265 and *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 241 re district attorney's discretion with respect to prosecuting criminal cases; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 646-650, re discretion of Attorney General to commence quo warranto actions - both in the context of statutes using the mandatory "shall" with respect to such duties.

2. Does the Section 18945, Subdivision (a) Appeals Procedure Encompass Appeals Regarding Local Nonenforcement of Uniform Building Codes.

The second question presented is whether section 18945, subdivision (a), which provides for appeals to the State Building Standards Commission, encompasses appeals regarding the *nonenforcement* of the uniform building code by *local* enforcement agencies? In the context of subdivision (a), the purport of the question would be whether the failure of the state to take over enforcement constitutes an "omission" within the

standards published in the State Building Standards Code, and other rules and regulations promulgated by the department pursuant to the provisions of this part, or alternative standards adopted by a city or county pursuant to this part, pertaining to apartment houses, hotels, or dwellings."

meaning of section 18945, subdivision (a). This is so since subdivision (a) applies only to the administration of building standards by a *state* agency.

Sections 18945 through 18949 constitute chapter 5 of the State Building Standards Law as reenacted and expanded by chapter 1152, Statutes of 1979, and as modified by chapters 1003 and 1082, Statutes of 1981. Section 18945 is the basic appeals provision. Section 18946 provides that the State Building Standards Commission may hear an appeal itself, or assign the matter to an advisory panel or a hearing officer. Significantly, when a hearing officer is designated, the law provides that the hearing officer "should, where possible, possess some expertise in the technical aspects of the appeal." Section 18947 involves special appeals with respect to OSHA standards. Section 18948 then provides that "[t]he responsibility for the enforcement and administration of building standards shall remain in the state or local agency specified by other provisions of law." Section 18949 provides a fee schedule for costs of appeals.

Section 18945 provides in full:

"(a) Any person adversely affected by any regulation, rules [sic], *omission*, interpretation, decision, or practice of any state agency respecting the administration of any building standard may appeal the issue for resolution to the [State Building Standards] commission.

"(b) If any local agency having authority to enforce a state building standard and any person adversely affected by any regulation, rule, *omission*, interpretation, decision, or practice of such agency respecting such building standard both wish to appeal the issue for resolution to the commission, then both parties may appeal to the [State Building Standards] commission. The commission may accept such appeal *only if the commission determines that the issues involved in such appeal have statewide significance.*"

It is to be recalled that section 18945 appears to have had its source in prior section 18910 of the *State Building Standards Law* which, as was demonstrated *ante*, was concerned with appeals regarding substantive matters relating to state building standards. It was not concerned with the question of the lack of enforcement or "nonenforcement" of such standards.

It is also to be recalled that section 17930 of the *State Housing Law* had historically provided for appeals to the *State Commission of Housing and Community Development* as to the application or enforcement of *state* building standards by the state acting through the Department of Housing and Community Development. It is also to be recalled that as to such appeals it was pointed out *ante* that a reason that appeals were to

be processed through the local agency was to permit the local agency to join in the appeal if it desired to do so.

We now juxtapose section 17930 of the State Housing Law, as amended by chapter 1152, Statutes of 1979, with section 18945, *supra*, of the State Building Standards Law as added by that act. Section 17930 now provides:

"Except as provided in Section 18945, the commission [of Housing and Community Development] shall hear appeals brought by any person as to the application of any rule or regulation of the commission promulgated pursuant to this part, except a building standard published in the State Building Standards Code, to such person under any facts and circumstances presented to the commission by such person alleging that the application or enforcement of any such other rule or regulation by the department under such facts and circumstances is an erroneous or unlawful application or enforcement of such other rule or regulation by the department. Any such appeal shall be submitted through the designated local agency.

"Any appeal alleging erroneous or unlawful application by the department of a building standard published in the State Building Standards Code may be brought pursuant to the provisions of Chapter 5 (commencing with Section 18945) of Part 2.5 of this division.

"The commission shall not, however, hear any appeals regarding local regulations which have been adopted pursuant to sections 17958.5 and 17958.7." (Emphasis in original.)

Pursuant to the requirement of the State Building Standards Law, the uniform building codes, as adopted by the Commission of Housing and Community Development (§§ 17921-17922), are required to be published in the State Building Standards Code.

We now address the precise question whether section 18945, subdivision (a), contemplates an appeal to the State Building Standards Commission from the failure of the state to take over enforcement of the uniform building codes from local enforcement agencies. Stated otherwise, would the failure of the state to assume enforcement responsibility constitute an "omission" within the meaning of section 18945, subdivision (a)?

We conclude that it would not. We believe such conclusion flows from a consideration of the historical duties and concerns of the State Building Standards Commission which were with respect to *substantive matters* relating to state building

standards. As explained *ante*, the commission's interest was directed towards the substance of state adopted building standards and not towards whether properly adopted standards were enforced. Nor were the commission's interests directed at all to the activities of *local* enforcement agencies. Section 17930 of the housing law was the section concerned with the application and manner of enforcement of state building standards, *as applied and enforced by the state*.

An examination of sections 17930 and 18945, subdivision (a) as presently constituted and interrelated in light of such background leads us to conclude that, as to the activities of the Department of Housing and Community Development, the 1979 amendments to section 17930 merely transferred the appeals functions of the Commission of Housing and Community Development regarding the application and enforcement of the uniform building codes to the State Building Standards Commission. Insofar as "enforcement" is concerned, it would appear that what was intended to be transferred was the *manner* of enforcement, not the lack of enforcement.

This conclusion is supported by the second paragraph of section 17930. That paragraph speaks in terms of appeals as to the "erroneous or unlawful" application of state building standards by the department, and provides that they shall be heard pursuant to section 18945. Accordingly, it would follow that the term "omission" as used in section 18945, subdivision (a), would presuppose that the state is already performing the enforcement duties of the local agency and *thereafter* has "omitted" something with respect to the administration of building standards which allegedly results in their "erroneous or unlawful" application. Stated otherwise, "omission" as used in section 18945, subdivision (a) does not refer to the omission of the state to assume enforcement duties pursuant to section 17952, but only refers to the manner in which the state enforces such standards once it has actually assumed such duties.

This conclusion is further supported by an examination of subdivision (b) of section 18945, where appeals from *local* actions may be taken only (1) by *both* the aggrieved party and the local agency and (2) where the appeal would present a matter of statewide concern. Subdivision (b) demonstrates that section 18945 was intended to concern itself with matters of *state* interest. Until the state has assumed local enforcement duties, no matter of state concern would be present.¹²

In sum, we conclude that the appeals procedure set forth in section 18945, subdivision (a), has no application to whether a particular local agency is enforcing the

¹² This procedure would appear to be derived from the prior section 17930 appeals procedure where we pointed out that section 17930 appeals were to be processed through the local agency so as to permit the local agency to join in the appeal if it desired to do so.

uniform building codes or as to whether the state Department of Housing and Community Development should assume such duties where local enforcement has broken down.¹³

3. Can a Person Who Disputes the Findings of State Inspectors Appeal Pursuant to Section 18945, subdivision (a)?

The third question presented is whether a person who disputes the findings of *state* building code inspectors has a right to appeal to the State Building Standards Commission pursuant to section 18945, subdivision (a).

We conclude that the answer is yes. This is clear from the discussion just set forth with respect to question two. A purpose of the amendment to section 17930 and the revision of the State Building Standards Law by the addition of section 18945 was to transfer the appellate functions with respect to the administration and enforcement of the uniform codes *by the state* from the Commission on Housing and Community Development to the State Building and Standards Commission. We are presented with no actual "findings" of state inspectors. However, we would assume that such findings would be made in the course of the administration and enforcement of the uniform building codes by a state agency, to wit, the Department of Housing and Community Development, and hence would constitute an "interpretation" or "decision" within the meaning of section 18945, subdivision (a).

¹³ It is to be noted that section 18945(a) would also apply to any other state agency which administers and enforces state building standards. See California Administrative Code, title 24, chapter 2-1, a portion of the State Building Code, for an enumeration and explanation of the enforcement duties of such other state agencies.