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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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OPINION 15-0120

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49 HEALTH

La. R.S. 36:258 La. R.S. 40:1730.21
La. R.S. 40:4 La. R.S. 40:1730.23
La. R.S. 40:5 La. R.S. 40:1730.28

The Department of Health and Hospitals ("DHH") does not have enforcement authority over the plumbing provisions that will become part of the State Uniform Construction Code effective January 1, 2016. Neither does DHH does have the authority to enforce any rule or regulation in the Sanitary Code that conflicts with the plumbing regulations promulgated by LSUCCC. However, pursuant to La. R.S. 36:258 (B) and La. R.S. 40:5(A), DHH maintains discretion to refuse to issue certain permits if a violation of the new plumbing regulations results in a health hazard or unsanitary condition in a facility or establishment regulated by DHH. Additionally, DHH may conduct health, safety, and sanitation inspections of any place pursuant to La. R.S. 40:5 (A)(21)(a).

Dear Ms. Humbles:

Our office received your request on behalf of the Louisiana Department of Health and Hospitals ("DHH"), concerning whether DHH has enforcement authority over certain rules and regulations promulgated by the Louisiana State Uniform Construction Code Council ("LSUCCC") as applied to facilities and establishments regulated by DHH.

Act 836 of the 2014 Louisiana Legislative Regular Session ("Act 836") repealed the Louisiana State Plumbing Code contained in Part XIV of Title 51 and instructed LSUCCC to:¹

Evaluate, adopt and amend the latest editions of the following as part of the State Uniform Construction Code:

- (1) The International Building Code, Chapter 29-Plumbing Systems.
- (2) The International Residential Code, Part VII-Plumbing.
- (3) The International Plumbing Code.²

LSUCCC is also charged with promulgating rules and regulations to adopt portions of the International Building Code, Chapter 29-Plumbing Systems, the International Residential Code, Part VII-Plumbing, and the International Plumbing Code which shall

¹ See La. R.S. 40:1730.22.1 (E) as enacted by Act 836 which states, "[t]he Louisiana State Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code] as amended by the state health officer acting through the office of public health of the Department of Health and Hospitals shall be null, void, and unenforceable on and after January 1, 2016."

² See La. R.S. 40:1730.28.1, as amended by Act 836.

become effective January 1, 2016.³ Act 836 results in the repeal of the plumbing regulations previously located in the Sanitary Code and enforced by DHH pursuant to La. R.S. 40:4 and 40:5⁴ and enacts new plumbing regulations adopted by LSUCCC and placed in the State Uniform Construction Code. In light of these changes, you have asked whether DHH will retain any authority to enforce, against facilities or establishments that DHH regulates, the plumbing regulations promulgated by LSUCCC pursuant to Act 836.

Effective January 1, 2016, La. R.S. 40:4 has been amended by Act 836 to provide as follows:

(C) In all cases of conflict between rules and regulations promulgated pursuant to this Section and the International Plumbing Code, International Building Code, Chapter 29-Plumbing Systems, or the International Residential Code, Part VII-Plumbing, as adopted and promulgated by the Louisiana State Uniform Construction Code Council, the provisions of the International Plumbing Code, International Building Code, Chapter 29-Plumbing Systems, or the International Residential Code, Part VII-Plumbing shall be used.

(D) Nothing in this Section shall permit the state health officer acting through the office of public health of the Department of Health and Hospitals to establish rules, regulations, policies, or interpretations that supercede or circumvent, or seek to supercede or circumvent the International Plumbing Code, the International Building Code, Chapter 29-Plumbing Systems, or the International Residential Code, Part VII-Plumbing, as adopted and promulgated by the Louisiana State Uniform Construction Code Council. The building official for the parish, municipality, or regional planning commission, as authorized in R.S. 40:1730.24 and appointed pursuant to R.S. 40:1730.25, or a qualified building code enforcement officer designated by the building official, shall have the authority to enforce the plumbing provisions adopted pursuant to Part IV-A, State Uniform Construction Code, Chapter 8 of this Title.

La. R.S. 40:1730.23 has also been amended to provide that:

(I) the building official for the parish, municipality, or regional planning commission, as authorized in R.S. 40:1730.24 and appointed pursuant to

³ See La R.S. 40:1730.26(2)(a) and La. R.S. 40:1730.28.1 (B), as amended by Act 836.

⁴ La. R.S. 40:4 states in pertinent part "[t]he state health officer acting through the office of public health of the Department of Health and Hospitals shall prepare, promulgate, and enforce rules and regulations embodied within the state's Sanitary Code covering all matters within his jurisdiction as defined and set forth in R.S. 40:5." La. R.S. 40:5 grants the state health officer and DHH the exclusive jurisdiction, control and authority to enforce a sanitary code for the entire state and to make health, safety, and sanitation inspections.

R.S. 40:1730.25, or a qualified building code enforcement officer designated by the building official shall have the authority to enforce the plumbing provisions adopted pursuant to this Part. (Part IV-a. State Uniform Construction Code).

Act 836 also repeals La. R.S. 40:4(7) which provided that:

(7) In order to protect the public from disease and safety hazards associated with public and private building plumbing systems, including sewer gas intrusion into buildings with the potential of asphyxiation, and other health hazards and contamination of water supplies by sewage, toxic chemicals, or other similar matter, via "cross connections" and "back siphonage", the state health officer shall prepare and promulgate all rules and regulations necessary to assure safe building plumbing systems. These rules and regulations shall include, but not be limited to, the building water supply piping system, the building drain system, and the building mechanical piping system. Under this authority, a building refers to any structure built, erected, and framed of component structural parts designed for the housing, shelter, enclosure, or support of persons, animals, or property of any kind.

We also note that Act 836 deleted the provision in La. R.S. 40:1730.28 (A)(5) which previously provided that "nothing in this Part shall be construed so as to prevent the state health officer from enforcing Part XIV (Plumbing) of the Sanitary Code, the enforcement of which is his statutory and regulatory responsibility."

The Sanitary Code enforced by DHH contains rules and regulations for facilities such as retail food establishments, food manufacturers, dairies, nursing homes, hotels, daycare centers, schools, public buildings and various other facilities. However, we note that DHH's powers are not limited to enforcement of the Sanitary Code.

Louisiana Revised Statute 36:258 (B) provides:

The office of public health shall perform the functions of the state which relate to the general health of the people of the state, including but not limited to responsibility for the preparation and supervision of the Sanitary Code, local health units, sewage treatment and disposal within the state, physical fitness, supplemental food programs for women, infants, and children, emergency medical services, and related functions affecting the public health. It shall also perform those functions of the state provided by law relating to environmental quality and pollution control which are related to the public health and which are specifically assigned to the department, including but not limited to functions relating to the treatment

and disposal of sewage within the state, with the exception of those functions assigned by law to the Department of Environmental Quality including, but not limited to, the licensing of sewage sludge transporters or haulers.

Louisiana Revised Statute 40:5 also gives DHH the exclusive jurisdiction, control, and authority:

(2) To take such action as is necessary to accomplish the subsidence and suppression of diseases of all kinds in order to prevent their spread.

. . . .

(5) To supervise, inspect, and issue sanitation permits for water supplies, slaughterhouses, cold storage plants, all places of public accommodation, and the handling and control of hygienic conditions with respect to all food.

. . . .

(7) To make all sanitary inspections and provide for the issuance of health permits.

. . . .

(15) Over the sanitary inspection of meat, milk, and other products which may affect public health and safety.

(16) Over the sanitary conditions required at any public gathering or meeting.

. . . .

(19) To conduct health inspections and issue health permits through state employed licensed sanitarians, or by licensed sanitarians of parish health units or departments.

. . . .

(21)(a) To conduct health, safety, and sanitation inspections, through state employed licensed sanitarians, of any place upon receipt of a complaint that the department determines shows appropriate and sufficient grounds to indicate a health hazard or sanitary code violation may exist, regardless of whether such place is licensed or not, or otherwise regulated.

However, mirroring the language in La. R.S. 40:4(D), La. R.S. 40:5 (B) states:

B. Nothing in this Section shall grant or be interpreted as to grant the state health officer or the office of public health of the Department of Health and Hospitals the authority to supercede the authority of municipalities or parishes to enforce the State Uniform Construction Code provided for in Part IV-A of Chapter 8 of this Title. The building official for the parish, municipality, or regional planning commission, as authorized in R.S. 40:1730.24 and appointed pursuant to R.S. 40:1730.25, or a qualified building code enforcement officer designated by the building official, shall have the authority to enforce the plumbing provisions adopted pursuant to Part IV-A of Chapter 8 of this Title.

Considering the above laws, it is our opinion that DHH does not have enforcement authority over the new plumbing provisions that will become part of the State Uniform Construction Code effective January 1, 2016. The State Uniform Construction Code is enforced according to the provisions contained in La. R.S. 40:1730.21 *et seq.*

However, considering the powers granted to DHH by La. R.S. 36:258 (B) and La. R.S. 40:5(A), DHH maintains discretion to refuse to issue certain permits if a violation of the new plumbing regulations results in a health hazard or unsanitary condition in a facility or establishment regulated by DHH. Additionally, it is our opinion that DHH may conduct health, safety, and sanitation inspections of any place pursuant to La. R.S. 40:5 (A)(21)(a), where there are sufficient grounds to indicate a health hazard exists, including any such health hazards that may be the result of a failure to comply with the plumbing provisions in the State Uniform Construction Code. Further, DHH is not prohibited from updating its rules to require the facilities and establishments that it regulates comply with the new plumbing regulations in the State Uniform Construction Code instead of referring to the Louisiana State Plumbing Code (which is repealed effective January 1, 2016). For example, LAC 51:X.113 currently requires drainage, sewage disposal, and plumbing systems in slaughter houses and meat packing plants to comply with the Louisiana State Plumbing Code. DHH can amend LAC 51:X.113 and other similar rules in the Sanitary Code to require compliance with the new plumbing regulations in the State Uniform Construction Code which will become effective January 1, 2016.

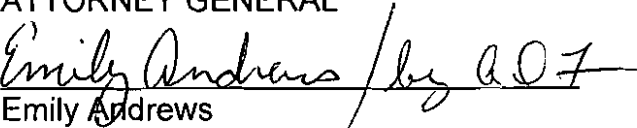
Next you ask whether DHH will have enforcement authority over provisions of the Sanitary Code that conflict with the plumbing regulations promulgated by LSUCCC as to the facilities or establishments regulated by DHH. Louisiana Revised Statute 40:4 (C) expressly states that in the event of a conflict between the rules and regulations promulgated pursuant to La. R.S. 40:4 and the International Plumbing Code, International Building Code, Chapter 29-Plumbing Systems, or the International Residential Code, Part VII-Plumbing, as adopted and promulgated by the Louisiana State Uniform Construction Code Council, the provisions of the International Plumbing Code, International Building Code, Chapter 29-Plumbing Systems, or the International Residential Code, Part VII-Plumbing shall be used. Therefore, DHH does not have the authority to enforce a rule or regulation in the Sanitary Code that conflicts with the

plumbing regulations promulgated by LSUCCC. In your opinion request you gave the specific example of two rules in Part XXIII of the Sanitary Code which regulate restaurants and other retail food establishments. These rules require that a sink with at least three compartments shall be provided for manual washing, rinsing and sanitizing equipment and utensils and a requirement that at least one handwashing lavatory shall be located to permit convenient use by all employees in food preparation areas and utensil washing areas.⁵ Currently these requirements are also set forth in the plumbing code, which will be repealed as of January 1, 2016. You are concerned that if the new plumbing regulations promulgated by LSUCCC do not contain these requirements then it may be deemed a conflict. We do not believe the absence of a rule or regulation in the State Uniform Construction Code amounts to a conflict in this situation, and therefore DHH would still have the authority to enforce the rules pursuant to La. R.S. 40:4(A).

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY: 
Emily Andrews
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JDC: EGA

⁵ LAC 51:XXIII.2303 and LAC 51:XIII.3109.