

OPINION 38

OFFICIAL OPINION NO. 38

December 27, 1973

Honorable Thomas E. Fruechtenicht
Indiana State Representative
2314 Indiana Village Boulevard
Fort Wayne, Indiana 46809

Dear Representative Fruechtenicht:

This is in response to your request for my official opinion on the following question:

“Does the Deputy Building Commissioner of a City-County Building and Minimum Housing Department in a county of 275,000-300,000 population having a second class city, who is appointed by the Mayor of that second class city, pursuant to Public Law 164 of the Acts of 1973, enforce the minimum housing code of the second class city only in the second class city or does his authority extend to the enforcement of the minimum housing code of the second class city throughout the county?”

ANALYSIS

Acts 1973, P.L. 164 added a new chapter numbered 72.3 to IC 1971, Title 17, Article 2. The Act created a joint city-county building and minimum housing department in every county having a population of 275,000 or more and less than 300,000 in which there is a second class city. As to its powers, the act provides, in part, that the department is to:

“. . . [A]dminister and enforce such building . . . [etc.] . . . and minimum housing codes and standards adopted pursuant to law by that county or second class city in the county on behalf of the county and the second class city in that county. IC 1971, 17-2-72.3-1.”

The Act further provides for the organization of the joint department, IC 1971, 17-2-72.3-2 provides:

“The joint city-county building and minimum housing department shall be under the control of and ad-

ministered by the Board of Commissioners of the County, who shall appoint a Building Commissioner who shall be responsible for the administration and enforcement of the building codes in said city and county. The Mayor of the second class city in said county shall appoint the Deputy Building Commissioner, who shall be the director of minimum housing enforcement and *shall administer and enforce the minimum housing code of the second class city in said county.*" (Emphasis added)

Your question, quoted above, stems from the emphasized language in the above quoted section. The concluding emphasized language in the above excerpt are words of description, not direction. By referring to the city as "the second class city in said county," the statute follows the statutory description of that municipality used elsewhere in the Act.

CONCLUSION

Therefore, it is my Official Opinion that the Deputy Building Commissioner of a City-County Building and Minimum Housing Department, in a county of 275,000-300,000 population having a second class city created pursuant to Public Law 164 of the Acts of 1973, may enforce the minimum housing code of the second class city only in the second class city as specifically provided in that Act. His authority does not extend beyond the city limits.