

**COUNTIES — COMMISSIONER COUNTIES — HOUSING — QUEEN
ANNE’S COUNTY HOUSING CODE NOT INVALID FOR LACK OF
FILING**

May 27, 1994

The Honorable William V. Riggs, III
Queen Anne’s County Commissioners

You have requested our opinion concerning the validity of the Queen Anne’s County Housing Code. Specifically, you ask whether the housing code is invalid because it was not recorded with the Clerk of the Circuit Court for Queen Anne’s County pursuant to Article 25, §4(b) of the Maryland Code.

For the reasons stated below, we concur with prior advice to the County Commissioners that the County Housing Code is legally valid. It was not required to be recorded with the Clerk of the Circuit Court.

I

Applicability of Filing Requirement

Article 25, §4(b) of the Maryland Code provides as follows:

An act, ordinance, or resolution adopted or passed by the county commissioners of any county *under the authority of §3 of this article* may be not become effective until a copy thereof has been filed with the clerk of the court of the county, and a fair summary of the act, ordinance, or resolution has been published, after adoption or passage, in at least one newspaper of general circulation in the county. Any act, ordinance, or resolution filed as herein required, shall be admissible as evidence in any court proceeding upon certification by the said clerk of the court.

(Emphasis added.) As the italicized phrase states, the filing requirement in §4(b) is applicable only to enactments of the county commissioners “under the authority of §3” of Article 25.

Article 25, §3 sets out the enumerated powers of the county commissioners. Nowhere in this section is there a grant of authority to the Queen Anne’s County Commissioners to adopt a housing code. Although Article 25, §3(s)(3) authorizes the Queen Anne’s County Commissioners to adopt “a building code,” it does not authorize the adoption of a housing code.

That the General Assembly intended a distinction between the two is manifest in Article 25, §3(s)(2), which authorizes the county commissioners of various counties to adopt “a building code and a housing code.” The distinction is stated as follows: “The building code shall provide and prescribe regulations for the issuance of building permits to be required prior to the construction or improvement of any buildings; and the code shall prescribe standards of construction, maintenance, and repair, covering structural safety, fire prevention requirements, lights and ventilation, and proper means of ingress and egress. The housing code shall provide and prescribe regulations and standards for human habitation, covering sanitation, density of occupancy, open-space requirements, rodent infestation, and human standards of occupancy.” §3(s)(2)(ii).

The authority of the Queen Anne’s County Commissioners to adopt a housing code derives instead from other sources: Article 83B, §6-103(a), which requires each political subdivision to “adopt by regulation, a local housing code that sets minimum property maintenance standards for housing in the subdivision”; and §1-103 of the Code of Public Local Laws of Queen Anne’s County, which grants to the County Commissioners “general power to do all things not contrary to [State law] as they may deem necessary in order to assure the good government of the County, ... to secure persons and property from danger and destruction and to protect the health, comfort and convenience of the citizens of the County.” Because the filing requirement in Article 25, §4(b) does not apply to enactments authorized outside Article 25, §3, it is not applicable to the Queen Anne’s County Housing Code.

II

Conclusion

In summary, it is our opinion that a failure to file the Queen Anne's County Housing Code with the Clerk of the Circuit Court for Queen Anne's County does not render the housing code legally defective.

J. Joseph Curran, Jr.
Attorney General

Jack Schwartz
Chief Counsel
Opinions & Advice