



LAW DEPARTMENT

MUNICIPAL BUILDING  
NEW YORK, N. Y. 10007

ALLEN G. SCHWARTZ,  
*Corporation Counsel*

February 28, 1979

OPINION No. 22-79

Hon. Irwin Fruchtmán  
Commissioner  
Department of Buildings

Dear Mr. Fruchtmán:

This is in reply to your oral request for an opinion on the following questions:

- I. Would the New York State Urban Development Corporation, or a subsidiary thereof ("UDC"), be subject to compliance with Chapter 26 of the New York City Charter, the Building Code and the New York City Zoning Resolution in connection with the construction of a convention center in Manhattan pursuant to legislation presently being considered by the State Legislature?
- II. May UDC choose to remain subject to the Charter and the Building Code while exempting itself from the Zoning Resolution and may permits and certificates of occupancy be issued by the Commissioner of the Department of Buildings for compliance with the Charter and the Building Code without there being compliance with the Zoning Resolution?

I

Subdivision (3) of Section 6266 of the Unconsolidated Laws of New York provides that UDC in constructing any project, shall comply with "local laws, ordinances, codes, charters or regulations applicable to such construction" except

"when, in the discretion of the [UDC], such compliance is not feasible or practicable, [it] shall comply with the requirements of the state building construction code..."

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The paragraph goes on to say that no municipality shall have power to modify or change plans or specifications for the construction of any UDC project, including plumbing, heating, lighting or other mechanical branch of work nor to require any person, firm or corporation employed by UDC on such work:

"to obtain any other or additional authority, approval, permit or certificate from such municipality in relation to the work being done;... or certificate of occupancy... as a condition of owning, using, maintaining, operating or occupying any project..."

In 1972, the Governor of New York vetoed an amendment which would have required UDC to comply with local zoning ordinances and regulations, saying UDC needed the power to "override local zoning ordinances and regulations in order to overcome restrictive local standards that have often impeded urgently needed development..." (N.Y.S. Legis. Annual, 1972, at 448). The Court of Appeals confirmed the Legislature's and Governor's view of the law in Floyd v. New York State Urban Development Corp., 33 NY 2d 1, 300 N.E. 2d 704 (1972). It found no constitutional infirmity in the law and found that the provisions gave UDC the right to disregard local zoning laws as well as local building codes and other local laws.

Hence, Section 6266 allows UDC to make the finding that compliance with the Charter, the Building Code and the Zoning Resolution is not feasible or practicable, and if such a finding is made by UDC it is obligated to adhere only to the state's building code.

### II

There is no requirement in Section 6266 that UDC make a finding of infeasibility or impracticability with respect to all pertinent local laws. In its discretion it may find that only compliance with the Zoning Resolution is not feasible or practicable and thereby opt to comply with the Charter and the Building Code.

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In such an event the Commissioner would be called upon to issue appropriate permits and certificates of occupancy although there has not been compliance with the Zoning Resolution. The Commissioner, however, would be authorized to issue such permits and certificates as if there had been full compliance with the Zoning Resolution and he would be acting consistently with statutory authority and responsibility in doing so.

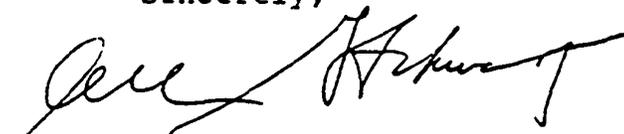
Since UDC could choose to exempt itself entirely from the Building Code and Charter, as well as the Zoning Resolution, it should not be precluded from formal compliance with the very substantial requirements in the Building Code and Charter simply because it chooses to exempt itself from the Zoning Resolution. Furthermore, there is nothing in the Charter that specifically conditions issuance of a certificate of occupancy by the Commissioner upon compliance with the Zoning Resolution. Rather, section 645(b)(3)(d) states that

"a certificate of occupancy of a building or structure shall certify that such building or structure conforms to the requirements and orders applicable to it and shall be in such form as the Commissioner shall direct."  
(emphasis added). See also §645(b)(3)(g)

The Building Code similarly says such certificates certify that a building conforms to "the building code and other applicable laws and regulations." §C26-50.0. See also §C26-121.2. Since Section 6266 of the UDC statute together with a UDC finding of impracticability makes the Zoning Resolution inapplicable, the Zoning Resolution would no longer be an "applicable" law or regulation, and conformity would not be required for issuance of a certificate under either the Charter or the Building Code.

Compliance on the part of UDC with the Charter and the Building Code, therefore, would invoke only the provisions of those and other "applicable" laws, if any, including the procedures for appeal contained therein and related thereto, and not the substantive or procedural provisions of the Zoning Resolution.

Sincerely,

  
Corporation Counsel

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