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BUILDING CODES AND CONSTRUCTION

STATUTES IN MISSOURI

JAMES JAY BROWN*

Of all land use regulations, building,¹ construction,² and maintenance and repair codes are among the least understood by lawyers and legislators.³ Yet, in both rural and urban areas, such regulations are growing in significance as property owners and legislators become more sensitive to the consequences of growth and urbanization.

Work on this subject was begun in 1971 as part of a study of Missouri building regulations. Other publications by the author which are part of this study include BUILDING CODE UNIFORMITY FOR FACTORY-BUILT HOUSING (1972), A MISSOURI LOW-RISE RESIDENTIAL BUILDING CODE (1973), and BUILDING CODES AND CONSTRUCTION STATUTES: A STUDY OF ONE STATE'S USE OF ITS POWERS (1974).

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1. Building codes are systematic bodies of law that give the regulatory agency authority to adopt, modify, amend and enforce regulations governing construction, reconstruction, remodeling, repair and maintenance of buildings. *American Sign Corp. v. Fowler*, 276 S.W.2d 651 (Ky. Ct. App. 1955).

2. "Construction" is a word of variable meaning but in its ordinary sense, when used in connection with real estate, it is defined as the building or erection of something which did not exist before as distinguished from alteration, repairs or improvements of existing structure. *Larson v. Crescent Planing Mill Co.*, 218 S.W.2d 814 (Mo. Ct. App. 1949). Construction statutes as discussed here refer to those regulations for specific facilities such as manufacturing plants and warehouses.

3. C. FIELD & S. RIVKIN, *THE BUILDING CODE BURDEN* (1975); C. RHYNE, *SURVEY OF THE LAW OF BUILDING CODES* (1960); Antieau, *The Power of Municipal Corporations to Protect the Public Health and Safety*, 1951 WASH. U.L.Q. 358; Bosselman, *The Legal Framework of Building and Housing Ordinances*, (pts. I & II), 11 MUNICIPAL ATTORNEY 39, 67 (1970); Clark, *Occupational Licensing in the Building Industry*, 1952 WASH. U.L.Q. 484; Nelson, *Building, Health and Housing Code Inspection in Missouri: A Need for Legislation*, 27 J. MO. B. 572 (1971); Westbrook, *An Introduction to Building Code Enforcement in Missouri*, 28 J. MO. B. 177 (1972); Note, *Model Ordinance to Control Noise Through Building Code Performance Standards*, 9 HARV. J. LEGIS. 66 (1971); Note, *Police Power and the Design of Buildings*, 5 NAT. RESOURCE J. 122 (1965).

Regulation of building construction traditionally rests with municipalities⁴ through state statutory delegation of power for a specifically defined purpose⁵ or through delegation of the state's police power to promote the general health and welfare of its citizens.⁶ When local control is inadequate or nonexistent, however, many states establish uniform standards. Thus, a national trend toward more statewide control is developing⁷ to prevent the construction of unsafe buildings and homes.⁸

4. The jurisprudential argument that local governments have a vested interest in maintaining their own unique controls is not resolvable to the satisfaction of either state or local proponents. Note, *Building Codes: Reducing Diversity and Facilitating the Amending Process*, 5 HARV. J. LEGIS. 587, 596-97 (1968). The supporters of uniform codes and regulations might be counted in greater numbers if the problem and need for uniformity were better known.

5. See MO. REV. STAT. § 64.170 (1969) (applying to first- and second-class counties). For statutes delegating powers to cities, see note 18 *infra*.

6. City of Stuttgart v. Strait, 212 Ark. 126, 205 S.W.2d 35 (1947).

7. D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW, ch. 11 (1971); MASS. DEP'T. OF COMMUNITY AFFAIRS, REPORT RELATIVE TO THE DEVELOPMENT, ADMINISTRATION AND ENFORCEMENT OF BUILDING CODES, 34-38 (1970); Rivkin, *Courting Change: Using Litigation to Reform Local Building Codes*, 26 RUTGERS L. REV. 774, 775-78 (1973); Comment, *Closing the Low-Cost Housing Gap: The California Factory-Built Housing Law*, 8 COLUM. J.L. & SOC. PROB. 469, 471-72 (1972); Note, *Building Codes: Reducing Diversity and Facilitating the Amending Process*, 5 HARV. J. LEGIS. 587, 592-600 (1968). This trend is a response in large part to inadequate housing supply, inadequate or nonexistent local control, and innovations in construction technology.

For statutory analysis of more effective state housing code enforcement, see NATIONAL COMM'N ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 21, 22 (1968); THE REPORT OF THE PRESIDENT'S COMM. ON URBAN HOUSING, A DECENT HOME (1968); R. SANDERSON, CODES AND CODE ADMINISTRATION, 37-74 (1969); U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, BUILDING CODES: A PROGRAM FOR INTERGOVERNMENTAL REFORM 65-71 (1966) [hereinafter cited as ACIR]; Metzger, *Statewide Code Enforcement—New Jersey, The Test Case*, 27 RUTGERS L. REV. 659 (1974).

In Missouri the exercise of power by the state over a matter of local concern becomes paramount when the statute clearly identifies the activity as one of state governmental function (e.g., *Coleman v. Kansas City*, 353 Mo. 150, 182 S.W.2d 74 (1946)), statewide concern (e.g., *School Dist. v. Kansas City*, 382 S.W.2d 688 (Mo. 1964); *State ex rel. Spink v. Kemp*, 365 Mo. 368, 283 S.W.2d 502 (Mo. 1955)), or general concern (e.g., *State ex rel. Zoological Bd. v. City of St. Louis*, 318 Mo. 910, 1 S.W.2d 1021 (1928)). Pervasive state police power regulations have been generally upheld. See Westbrook, *Municipal Home Rule: An Evaluation of the Missouri Experience*, 33 MO. L. REV. 45, 63 (1968). Municipal ordinances, however, even when not in conflict with a state statute, are more strictly scrutinized, particularly if home rule status is involved. *Id.* at 66-70. Even under the Missouri home rule amendment, the state may expressly preempt the field of regulation or legislate in conflict with local controls. See Comment, *State-Local Conflicts Under the New Missouri Home Rule Amendment*, 37 MO. L. REV. 677, 692 (1972). A recent decision, *State ex rel. St. Louis County v. Campbell*, 498 S.W.2d 833 (Mo. Ct. App. 1973), held condemnation powers to be a matter of local concern in a charter county and therefore state statutes did not control.

8. Minimum statewide standards are imposed in 21 states. These acts either mandatorily or optionally preempt local controls. For examples of such statutes, see CAL.

A history of such statewide regulations, especially for industrial plant, auditorium and building safety, can be found in Missouri.⁹ This Article will examine these regulations and illuminate their usefulness in modern society by focusing on Missouri's building codes and construction statutes.¹⁰

I. LOCAL REGULATION OF BUILDING AND CONSTRUCTION

Recognizing the need for building and construction code regulations and its own disinterest and inability to effectively monitor and enforce such controls, Missouri delegated its police powers to local governmental units. The powers were tailored to county classifications (differentiated by dollars of assessed valuation) and city classifications (established by population statistics).¹¹ Under such a classification scheme, no minimal statewide building standards were established for cities, counties or rural unincorporated places.

A. General Building Regulations

Within this classification division, the state created enabling statutes whereby local governments could choose at their discretion to adopt general building regulations. While the numbered city classes (e.g., third-class cities) have police powers delegated to their local councils or governing bodies,¹² villages (populations under 500 of which there

HEALTH & SAFETY CODE §§ 17910-17945 (Deering 1975); COLO. REV. STAT. §§ 24-32-701 to 24-32-804 (1976); MINN. STAT. §§ 16.83-.87 (1977); VA. CODE §§ 36-70 to -82 (1976). For a better understanding of the codes, see NATIONAL FIRE PROTECTION ASS'N, FIRE PROTECTION HANDBOOK (12th ed. 1962); NATIONAL FIRE PROTECTION ASS'N, LIFE SAFETY CODE (1970); NATIONAL FIRE PROTECTION ASS'N, 4 NATIONAL FIRE CODES (1972).

9. Missouri has extended its statewide safety regulations to cover mobile homes and building barriers to the physically disabled. See notes 86-91 and accompanying text *infra*.

10. See also J. BROWN, BUILDING CODES AND CONSTRUCTION STATUTES: A STUDY OF ONE STATE'S USE OF ITS POWERS (1974); MO. DEP'T OF COMMUNITY AFFAIRS, BUILDING CODE UNIFORMITY FOR FACTORY-BUILT HOUSING (J. Brown ed. 1972) [hereinafter cited as Building Code Uniformity]; MO. DEP'T OF COMMUNITY AFFAIRS, A MISSOURI LOW-RISE RESIDENTIAL BUILDING CODE (J. Brown ed. 1973).

11. These are the two types of local jurisdictional entities recognized by statute. The classifications of first- and second-class cities were abolished in 1975. 1975 Mo. Laws 183 (H.B. No. 398, § B). Any city with 10,000 or more people may adopt a charter for its own government by complying with MO. CONST. art. VI, §§ 19, 20. See MO. REV. STAT. § 82.020 (1969). Areas with 3,000 or more people may elect to become third-class cities, *id.* § 72.030, and areas with 500 or more people may elect to become fourth-class cities. *Id.* § 72.040. Counties are organized by assessed property valuation. First-class counties are areas having \$300 million or more, second-class counties \$70-300 million, third-class counties \$10-70 million, and fourth-class counties less than \$10 million in assessed property valuation. *Id.* § 48.020.

12. See, e.g., MO. REV. STAT. § 77.500 (1969) (third-class city council may regulate

are at least 250 in Missouri) do not.¹³ Counties of the first- and second-class may adopt building construction and electrical construction codes while third- and fourth-class counties may not.¹⁴ The result is that 101 of Missouri's 114 counties lack the delegated powers to regulate construction because no specific statute exists which grants such authority to these two classes of county government. However, these jurisdictions may be able to enact building regulations incidental to other delegated powers.¹⁵ For example, they might incorporate building code provisions into their zoning ordinances and subdivision or health regulations.¹⁶

B. *Specific Construction Regulations*

Specific construction activity, such as plumbing and electrical work, was identified for two types of selected regulation. The first is through mandatory city regulations. "Each city with a population of fifteen thousand or more . . . shall, . . . prescribe rules and regulations for the material, construction and inspection of all plumbing and sewerage placed in, or in connection with, any building in each city."¹⁷ Not only does the state delegate its police powers, it also appears to be "ordering" the establishment of a specific regulatory code along with the requisite enforcement procedures. For counties of the first-class, a "Uniform Plumbing Code"¹⁸ has been formulated for discretionary

and control the construction of buildings); MO. REV. STAT. § 79.450 (Supp. 1975) (Board of Aldermen may regulate and control construction in fourth-class cities); MO. REV. STAT. § 341.060 (1969) (cities with population over 15,000 shall prescribe regulations of material construction and inspection of plumbing).

13. Towns and villages may be able to control construction through zoning regulations. See MO. REV. STAT. § 80.090 (1969).

14. See *id.* § 341.100 (county court in first-class county may adopt code of plumbing regulation upon a finding by the county court that it is necessary for the promotion of public health and safety); *id.* §§ 64.170-.190 (county court in first- and second-class county may adopt building and electrical code regulations and may license electrical workers).

15. See *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955).

16. See MO. REV. STAT. § 80.090 (1969).

17. *Id.* § 341.060.

18. *Id.* §§ 341.090-.220. First-class counties may adopt a uniform plumbing code while in other counties the county court may adopt a Code of Regulations. *Id.* § 341.100. The county board department of plumbing and sewer inspection has the duty to prepare such a code which must be approved by the Missouri Division of Health. *Id.* §§ 341.110, .130. In cities with a population of 15,000 or more plumbing must be certified, *id.* § 341.010, as in compliance with regulations for materials and construction, *id.* § 341.060. The office of plumbing inspector, *id.* § 341.070, or board of health, *id.* § 341.060, must make an inspection, enforce the regulations, and can supervise the work in progress, *id.* § 341.150. Licensing of plumbers, *id.* §§ 341.160-.210, and construction permits, *id.* § 341.140, are required.

adoption upon a county court finding that the Code would promote the public health and safety.¹⁹

The second form of regulation concerns the building tradesmen. County courts in first- and second-class counties are empowered to adopt ordinance regulations for electrical wiring and installation.²⁰ Furthermore, they may appoint a five-member building commission to prepare building and electrical regulations for the court's adoption.²¹ As part of these broadly stated powers, the commissioners are empowered to license all electrical workers.²² This legislation produced extensive licensing programs in those cities where other code regulations are enforced by qualified personnel. As a consequence, nearly all electricians are subject to control in Missouri's major urban areas.

C. *Fire Prevention*

Controlling fire problems by specifically delegated regulatory powers also affects existing buildings and future construction. The statutory authority enables the local jurisdictions to classify each hazard by fire district boundaries or zones. The hazard classifications range from very high to slight. The state empowers the circuit court to establish a fire protection district in response to the petition of one hundred taxpaying electors.²³ Fire districts, most of which can be assumed to have adopted their own set of regulations, are created in eighty-nine percent of the Missouri cities with populations over 10,000 (forty-eight incorporated places). The regulations encompass ninety-seven percent of the cities' populations.²⁴ Within each district,²⁵ specific fire district

19. *Id.* § 341.100.

20. *Id.* § 64.170.

21. *Id.* § 64.180.

22. *Id.* § 64.190 ("authorized to examine all applicants for a license to engage in electrical wiring or installation work and shall have authority under said regulations to revoke or suspend any license issued for refusal or failure to comply with the regulations adopted").

23. The most widely adopted regulations are those promulgated by the National Fire Protection Association. See NAT'L FIRE PROTECTION ASS'N, LIFE SAFETY CODE (1973); NAT'L FIRE PROTECTION ASS'N, NATIONAL ELECTRICAL CODE (1975).

24. Applefield, *Fire District Use in North Central Region Cities*, 67 FIRE J. no. 1, table 4 at 31 (Jan. 1973).

25. A fire protection district is a political subdivision organized and empowered to supply protection against fire and to give aid in the event of an emergency. MO. REV. STAT. § 321.010 (1969). The Circuit Court of any county may establish a district upon a petition filed by 100 taxpayers. *Id.* §§ 321.020-.030. The decree of incorporation becomes final by election. *Id.* § 321.120. Each district is empowered to maintain fire fighting apparatus, buildings, water supply and fire hydrants. *Id.* § 321.220.

regulations are applied to control such things as number and location of exits and interior finishes and their resistance to combustion. Overlapping and occasionally contradictory standards exist, however, because such construction problems are also within the purview and regulatory province of local building codes.

II. RETAINING STATEWIDE CONTROL FOR SPECIAL PURPOSES: CONSTRUCTION REGULATIONS

At different times and under diverse classifications without a consistent standard, the state passed construction statutes mandating standards for special types of buildings, specific mechanical devices or building functions. For example, boiler regulation powers are delegated to the local governments,²⁶ while elevator construction, inspection and licensing are generally under state control.²⁷

Although the state legislature proclaims a fundamental concern for uniformity for certain aspects of construction, such as in a designated building use type, there has not been a clear preemption of the field. An overriding interest, however, is often evident. Hospitals provide an example. Actual construction supervision for use licensing resides in the Missouri Division of Health,²⁸ while satisfaction of fire and life safety standards for fire escapes is within the jurisdiction of local building authorities or their equivalent counterparts.²⁹ It is quite possible that besides providing uniformity in certain areas, statewide control could be effective in regulating construction and maintenance in areas with relatively uncommon problems requiring great expertise. For example, local codes and authorities might be able to adequately safeguard a community's single-family housing structures but not its schools, which require very sophisticated attention.

In spite of the evident lack of centralized regulatory power and a uniform body of regulation, a degree of classification is possible in at least three instances: fire protection in public places, industrial safety and public health. These are the three groups of special purpose statutes where the state indicated a desire to achieve statewide uniformity. That uniformity is expected to begin with the enunciated statut-

26. *See, e.g., id.* § 77.550; MO. REV. STAT. § 77.450 (Supp. 1975) (enabling acts for third- and fourth-class cities).

27. *See, e.g.,* MO. REV. STAT. (1969) §§ 292.050 (elevators), 8.620(9) (provision to aid handicapped), 315.100 (hotel construction and fire protection), 294.040(12) (prohibits minors from operating freight elevators).

28. *Id.* §§ 197.010-.120.

29. *Id.* §§ 320.030-.050.

ory standards for new construction and maintenance and repair, and to continue through the inspection and licensing activities of the state and/or local officials.

A. *Fire Protection in Public Places and Facilities*

Public facilities or buildings include every "hotel, boarding and lodging house, tenement house, schoolhouse, opera house, theatre, music hall, factory, office building . . . and every building therein where people congregate or which is used for a business place or for public or private assemblages, which has a height of three or more stories."³⁰ Since the statute limits the inspection jurisdiction to buildings of a defined height, it is possible that fire protection inspections are not performed in the contemporary one- and two-story motels which contain meeting room and convention facilities. These buildings are commonly found along the interstate and state highways outside of cities and beyond their inspection authority.

Hotel-motel³¹ construction, occupancy, and use are subject to regulatory controls covering everything from toilet facilities to fire escapes.³² These regulations are one of the few instances of concentrated statutory drafting. They provide the expected checklist of fire standards for the obvious needs, such as fire extinguishers, hoses and fire escapes.³³ Inspection and enforcement by the Missouri Division of Health³⁴ should be relatively easy to complete where there are no subjective determinations about the degree of compliance; either a motel has fire extinguishers or it does not. Public reports about the

30. *Id.* § 320.010.

31. *See id.* § 315.010 defining hotels-motels: "every building or other structure . . . held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which ten or more rooms are furnished for the accommodation of such guests."

32. *See, e.g., id.* §§ 315.080-260. Hotels more than three stories must have fire escapes at the end of hallways. *Id.* § 315.080. Those less than three stories must have properly knotted manilla ropes reaching the ground. *Id.* § 315.090. All hotels must have a fire extinguisher or hose and standpipe for every 2,000 feet of floor space on each floor. *Id.* § 315.110. They must have an opening leading to the outside or an airshaft in all sleeping rooms, *id.* § 315.120, and must have suitable water closets and overvaults. *Id.* §§ 315.130-140. Each hotel must have a main public washroom, *id.* § 315.150, and all towels and bedding must be fumigated. *Id.* § 315.160. Permit licenses must be issued annually. *Id.* 315.040. The Director of the Division of Health must inspect once a year or more often at his discretion. *Id.* § 315.020. He may also promulgate regulations for tourist camps. *Id.* § 315.240. The prosecuting attorney of each county may sue to force compliance and can have violators closed. *Id.* § 315.200.

33. *See id.* §§ 315.080-.090.

34. *See id.* §§ 315.200, .240.

activities of the Division of Health indicate that reasonably regular inspections are being performed.³⁵ However, it could not be determined how much pre-construction advice was tendered or what supervisory action occurred during construction.

Although it appears that state agency inspection and enforcement powers preempted the field of local control, the state actually delegated its powers over fire escapes. "When fire escapes are to be attached to buildings within a city, they shall be constructed under the supervision of and subject to the approval of the commissioner or superintendent of public buildings within such city."³⁶ The proper installation and construction of the escapes pose little or no problem in those major cities where trained and experienced building inspectors are employed, but such is not the case in the hundreds of small local jurisdictions in sparsely-settled areas where highway-generated growth and construction are occurring and where inspectors are non-existent.³⁷ The fire chief approves the project in these areas, but it is unclear on what grounds he is qualified to determine the subjective issues of proper attachment to a building's exterior, grade and quality of metal construction, and load-bearing capacity in relation to the building's crowd or audience capacity.³⁸ If there is no fire chief, inspection is delegated to a sheriff.³⁹ This raises a certain degree of

35. The Division of Health of the Missouri Department of Public Health and Welfare provides advice on new construction, fire safety and sanitation facilities to builders of hospitals, *id.* §§ 197.010-.120; nursing homes, *id.* §§ 198.011-.170; and hotels and motels, *id.* §§ 315.010-.260.

During fiscal year 1972, 98.9% of these establishments (hotel and motel) met state requirements for licensure. In follow-up telephone interviewing with knowledgeable officials, it was learned that hospital, nursing home and intermediate care facilities must be annually licensed under Missouri regulatory standards pursuant to code mandate. A yearly inspection is made for this purpose. Those health care facilities found not to be in compliance are reported to county prosecutors for action. Such a drastic step seems to be rare since an indirect enforcement procedure exists under the state's annual certification program. Every health care facility must have been currently certified as meeting federal standards on health in order to be eligible to receive their patients' Supplemental Security Income and Medicaid-Medicare reimbursement payments. The threat of losing such sizeable sources has caused hospitals, nursing homes and intermediate care institutions to maintain safe and sanitary conditions. During fiscal year 1973, only 97.5% of hotels and motels had met licensure standards. No illnesses or deaths associated with these facilities were reported during this two year period.

DIV. OF HEALTH, MO. DEP'T OF PUBLIC HEALTH AND WELFARE, BIENNIAL REPORT, 1972-73, at 28 (1974).

36. MO. REV. STAT. § 320.020 (1969).

37. *Id.* ". . . and if there be no such office within such city, they [the fire escapes being constructed] shall be subject to the approval of the chief of the fire department of such city."

38. *See, e.g., id.* § 315.080.

39. *Id.* § 320.020.

skepticism. Most of these law officers do not possess sufficient credentials to make subjective building construction decisions. If their performance of these duties is below tolerable limits, Missouri citizens may be experiencing higher risks and exposures to personal hazard in non-city, public facilities than they realize. Since the state, through its legislatively mandated health and safety requirements, expressed a fundamental concern for regulation in this area, corrective steps should be taken.

Missouri enacted detailed regulations for fire escapes and building exits.⁴⁰ The overall goal of these regulations is to see that fire escapes and exit doors are properly installed, inspected and maintained by the local officials. In the major cities, achievement of this goal is assumed, since vital code enforcement positions are properly staffed. However, inherent weaknesses in the statutes render the safety goals illusory outside major cities. Regular inspection of under-construction and existing facilities is the condition precedent to a building commissioner's, fire chief's or sheriff's issuance of a written violation notice. Whether such inspections are made in the unincorporated suburban fringes or rural areas, or whether citizens regularly have occasion to use a fire escape, thereby discovering deficiencies which can then be reported, is open to question. If faulty fire escapes are not discovered, prosecuting attorneys will have little opportunity to enforce the conviction and penalty provisions of the code.⁴¹ Even if a construction violation is discoverable, neither the county sheriff nor the prosecuting attorney can stop a project for a construction violation. Fines are not a solution either. They are usually absorbed into the building costs. Thus, unless a builder is faced with denial of an occupancy permit or use license upon completion, there seems to be no means under existing laws for insuring that suburban and rural projects meet minimal state standards. Unfortunately, the violations which occur and produce litigation are those which proximately cause death or other disas-

40. See, e.g., *id.* §§ 320.010-100. Buildings of three or more stories must have exterior or interior fire escapes. *Id.* § 320.040. Depending upon the circumstances, the number of escapes is determined by the building commissioner, chief of the fire department or sheriff. *Id.* § 320.030. It is the duty of the owner, proprietor, lessee, or keeper to follow prescribed methods of construction of such escapes such as balconies, handrails and degree of pitch. *Id.* § 320.020. Public building doors must open outwardly. *Id.* § 320.070. Inspection and enforcement in cities is by the Commissioner of Public Buildings and in counties by the sheriff. *Id.* § 320.020. Violations are to be reported to the prosecuting attorney, *id.* § 320.060, who may sue to enjoin the owner from operating until appropriate repairs are made. *Id.* § 320.020.

41. For a sound explanation of why there is a paucity of litigation in the code enforcement field, see Westbrook, *supra* note 3, at 180-81.

trous consequences.⁴²

Missouri also enacted regulations for amusement buildings, including arenas, auditoriums, circuses, theaters and opera houses, where large audiences gather and sit in rows, boxes or balconies.⁴³ The primary concern of this detailed statute, originally enacted in 1877 and amended periodically since that time, is fire protection. It specifies, among other things, the number of seats per aisle, the width between aisles and the number, location and arrangement of exit doors.⁴⁴

B. *Industrial Safety*

Although state efforts to provide safety in industrial facilities have an indirect effect upon building and construction, the industrial safety statutes are considered separately from building codes. This thinking is short-sighted and potentially expensive for builders and owners.

The state requires that certain physical safety features be built in or added to industrial facilities. Logically, such features should be provided during original construction for purposes of economy and tax benefits, instead of being added later. Safety features originally built into a structure constitute part of the building's depreciable cost, while subsequent safety features would be separately financed. In addition insurance companies should exert pressure for better safety precautions by building owners now that the postwar industrial trend toward larger one-story steel framed factories has contributed to a staggering rise in fires.⁴⁵ The resulting trend toward spreading plants out over the

42. A 1972 case provides a grim reminder. *Derboven v. Stockton*, 490 S.W.2d 301 (Mo. Ct. App. 1972), involved the violation of a state building regulation in a wrongful death action. Twelve people perished in a Moberly, Mo. tavern in a fire caused by arson. The lessors of the tavern had to defend a wrongful death action when plaintiff sued for his wife's untimely demise. The evidence established that the doors of the tavern opened inward. Six of the twelve dead were found piled against the door; they had panicked and rushed to escape and the door could not be opened. All exit doors in buildings where people assemble are to open outwardly. Local authorities did not enforce the law as the state mandated. Inspection and enforcement of the penalty provisions might have saved lives, since violation of the statute was ruled negligence per se. The city prosecutor never received the exit door violation for legal action, or if he did, prosecution was avoided. The three-month jail penalty would have caused the doors to be corrected. The Moberly building inspector testified that he inspected the tavern shortly before the fire but refused to issue a certificate of occupancy and compliance. He stated that there was "no reason to issue a certificate when there [had] been no changes made in the building." *Id.* at 306.

43. *See* MO. REV. STAT. § 316.060 (1969).

44. *Id.*

45. The Factory Mutual System group of industrial insurers began alerting private and public groups about the 13% increase in property damage and business interruption losses among the nation's 500 largest corporations (1973 losses totaled \$164.6 million).

landscapes and then filling them with products stacked to the roof or with tightly spaced machines materially increases fire risks.⁴⁶

Missouri enacted legislation to protect the "health and safety of employees."⁴⁷ Such protection is provided through specific construction requirements such as exit doors opening outward,⁴⁸ guards around wellholes,⁴⁹ properly secured scaffolding,⁵⁰ safety guards around machinery⁵¹ and additional fire extinguishers and equipment.⁵² These requirements could be more economically provided during construction than after a building is completed. Exit door violations, for example, pose serious risks⁵³ which can be alleviated during the original construction period. The inspection, complaint and enforcement procedures are significant,⁵⁴ yet, it is unclear how the Department of Labor and Industrial Relations could penalize a violator who fails to provide outward opening doors or safe scaffolding. It is doubtful that, where machinery is unsafe, the Department could seal off the entire premises as empowered by the statutes. Prosecution for commission of a misdemeanor seems unlikely as well because of the delicate balance of interests in fringe and rural areas between the county government officials and the major employers in the jurisdiction.

The fire escape requirements depend upon building height and the presence of twenty or more employees working above the first floor.⁵⁵ Such a provision is illustrative of the legislative concern for the safety

Their index of industrial fires shows losses over \$50,000 in value totaled 660 in 1973, a sharp rise from 150 in 1970 and 100 in 1965. *The Rising Cost of Plant Fires*, BUS. WEEK, July 20, 1974, at 78.

46. *Id.* Insurance company research has also disclosed that "the typical one-story, steel-framed factory often is more susceptible to fire than older masonry structures, which can be effectively protected with sprinkler systems." *Id.* Missouri has no statutory requirement for sprinklers. Sprinklers are more economical to install during original construction than after the building is complete.

47. *See* MO. REV. STAT. §§ 292.010-.570 (1969).

48. *Id.* § 292.070.

49. *Id.* § 292.050.

50. *Id.* § 292.090.

51. *Id.* §§ 292.020-.030.

52. *Id.* § 292.060.

53. *See* the discussion of *Derboven v. Stockton*, 490 S.W.2d 301 (Mo. Ct. App. 1972), note 4 *supra*.

54. The Department of Labor and Industrial Relations is to inspect all buildings and is empowered to issue written notices that violations must be corrected within 10 days. MO. REV. STAT. § 292.020 (1969). The Department may impose penalties and submit violations to the county prosecutor if not corrected. *Id.* §§ 292.230-.250. The Department may also seal the equipment and render it inoperative. *Id.* § 292.020.

55. *See id.* § 292.060.

of large numbers.⁵⁶ Height provisions, however, may be outmoded today since modern factory design emphasizes the production and storage economies of one-story buildings. Even where modern plants or warehouses have two stories, only the larger installations will employ over twenty people. As a result, thousands of smaller businesses located in suburban industrial parks are excluded from regulation.

A significant body of industrial safety legislation concerns the personal health of employees and their environmental working conditions in factories, manufacturing plants and mercantile establishments.⁵⁷ The requirements of this legislation for protecting employee health influences significant portions of most industrial-mercantile structures. It would be both logical and economical to initially construct the dust and gas exhaust systems, bathrooms and the like which these statutes require. In this age of architectural efficiency, the interfacing of building codes, health and safety codes, and occupational disease statutes is easy. The enactment of federal legislation to improve employee safe working conditions, however, strongly suggests that even in the late 1960's this logical interfacing was not significantly practiced.⁵⁸

Occupational disease prevention is another industrial safety concern warranting uniform statewide regulation.⁵⁹ Control over escaping

56. See *id.* § 292.140 (employee health requirements).

57. See *id.* §§ 292.100-.280. Factories and workshops must be painted annually where females and children are employed and dusty work is carried on, *id.* § 292.100; ventilation for removal of airborne impurities must be provided in all manufacturing, mechanical, mercantile and other establishments, *id.* § 292.110; hoods connected to blowers or suction fans must be installed over wheels and machines which generate dust, smoke or poison gases, *id.* § 292.120; where overcrowded conditions create a health hazard for employees, the Department of Industrial Inspection, when supported by a physician's opinion, may prohibit such overcrowding, *id.* § 292.140; washrooms, water closets and seats shall be provided for female employees in any establishment where unclean work is performed, *id.* §§ 292.150-.170; clothes changing, shower, and toilet rooms shall be provided where a foundry building has four or more male employees, *id.* § 292.260; and adequate ventilation devices and unobstructed dry gangways shall be provided in all foundries. *Id.* § 292.270.

Inspection and enforcement is by the Department of Labor and Industrial Relations, Inspection Section. It makes annual inspections for compliance with heating, lighting, ventilation and sanitary facilities. *Id.* § 292.180. The Department may seal machinery when it finds that the ventilation, sanitation, machinery, etc., is dangerous to the health and safety of employees, *id.*, and may order that fans be installed. *Id.* § 292.130. Foundry facilities that employ four or more men shall be inspected by the Department. *Id.* § 292.280. The Department may issue orders to rectify any violation. *Id.*

58. Approximately 14,200 deaths and 2.1 million temporary total disability accidents are recorded annually in the nation. Burton, *The Occupational Safety and Health Act*, 23 LAB. L.J. 501, 502 (1972).

59. See MO. REV. STAT. §§ 292.300-.430 (1969). Employers must provide protection for all employees engaged in carrying on any work which may produce illness or disease

fumes or chemicals and the containment of dusts generated by mechanical processes is the focus of this legislation. Mechanically controlling dangerous fumes, dusts and chemicals involves sizeable investments in special equipment. Most plant owners provide such facilities during original construction rather than risking potential injury or death, or being subject to prosecution for a misdemeanor or for violations discovered during an annual inspection by the Department.⁶⁰ These restraints indirectly influence construction because they are, in effect, building standards. If they are not provided originally, they will have to be provided later, at much higher cost.

Since 1975, the Department of Labor and Industrial Relations enforces all of these factory and foundry employee safety statutes. The Department's duties include making no "less than two inspections during each year of all factories, warehouses, office buildings, . . . theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops."⁶¹ Not only must the Department inspect, but it must also assert some kind of enforcement pressure where necessary. When violations go uncorrected, the director may call upon the prosecutor of the jurisdiction wherein the building is located to "lend all possible aid."⁶² The penalty provisions previously noted suggest that the prosecutor will be asked to decide to litigate. How often proceedings are filed is unknown because statistical information on such matters is not kept by the state. The Department does not see itself in an enforcement-penalty levying role. Its image is that of an inspection-investigatory-advisory body.

From the perspective of effectiveness, many questions should be raised about the Division of Industrial Inspection and its successor, the Department of Labor and Industrial Relations, Inspection Section. The Missouri Legislature has provided insufficient funding for the Department; so much so, that it is unable to carry out the statutorily mandated biannual inspections and is understaffed with qualified inspection personnel. The Department relies on the threat of unexpected inspections

peculiar to the work carried on. *Id.* § 292.300. Respirators must be furnished where noxious or poisonous dust is produced. *Id.* § 292.320. Dressing rooms and lavatories must be provided for employees doing work involving dust, fumes and gases. *Id.* § 292.360. Similarly, dining halls and drinking fountains must be provided for employees engaged in dangerous work. *Id.* § 292.370. Dust must be kept to a minimum, *id.* §§ 292.390-400, and notice of dangerous conditions must be posted. *Id.* § 292.420.

60. *See id.* § 292.410.

61. *Id.* § 291.060.

62. *Id.* § 292.250.

of randomly selected plants, warehouses and mines to overcome its staffing insufficiencies. In addition, workmen's compensation claim reports are scrutinized in attempts to uncover violators. This source of information is not timely or effective because of delays in the unmechanized processing and reporting activity. The Department maintains a follow-up procedure for determining compliance with recommended and mandatory changes and/or violations. However, in reality, this procedure may be characterized as erratic and largely nonexistent. Since there is no statutory mandate, statistics on inspection, compliance and enforcement activities are not published, if they are kept at all. An annual report is not published. Advice and supervision services are not rendered to builders and contractors. Finally, it is an accepted practice for enforcement officials to avoid pressing violator employers with the threat of criminal action. Practical, as well as political considerations often dictate such decisions. The promise for improving employee safety through OSHA remains.

C. OSHA

The Federal Occupational Safety and Health Act (OSHA),⁶³ a separately funded administration within the Department of Labor, contains regulations considered for implementation in Missouri. Under the matching funds provisions of the Act, the Missouri Division of Industrial Inspection devoted two and one-half years to the creation of a developmental plan⁶⁴ under which it would carry out the purposes of the Act. Although published in March of 1973, the plan failed to receive approval. The legislature simply permitted the OSHA administration to assume full responsibility for inspection functions. Since 1971, OSHA paid fifty percent of the Missouri Division's expenses for performing the inspections. On July 1, 1975, however, OSHA officials began exercising control over and enforcement of standards for job safety and health matters throughout the state. Con-

63. 29 U.S.C. §§ 651-78 (1970). Baird, *OSHA—Monster or Miracle*, 33 FED. B.J. 154 (1974); Cohen, Mintz & Brooks, *OSHA: A Forum on Occupational Health*, 27 N.Y.U. CONF. LAB. 213 (1974); Marinelli, *Occupational Safety and Health Act: The Right of a Worker to a Safe Work Place Environment*, 78 W. VA. L. REV. 57 (1975); Neill, *Occupational Safety and Health Act: Scope and Substance*, 27 MO. B.J. 418 (1971); Neill, *Occupational Safety and Health Act: Administration and Enforcement*, 27 MO. B.J. 480 (1971); *Symposium: The Developing Law of Occupational Safety and Health*, 9 GONZ. L. REV. 333 (1974); Comment, *OSHA and the Seventh Amendment*, 1975 BRIGHAM YOUNG U.L. REV. 543. Substantive analyses of the Act may be found in Comment, *The Occupational Safety and Health Act of 1970: A New Concern for Employers*, 34 U. PITT. L. REV. 567 (1973).

64. *See id.* §§ 291.070-.120.

sequently, the Missouri agency withdrew from those fields. Its remaining services are inspections for safety in mines, at places where child labor is employed and at private employment agencies, and investigations of workmen's compensation accidents. The state staff was reduced by eighty-three, from forty-eight to eight, since OSHA took over all other inspection functions. Public building inspections and accident investigations are not within OSHA's jurisdiction, and thus will remain the Missouri Division's responsibility.

Nearly all of the professional societies and code organizations involved in building and construction activity⁶⁵ identified, after careful study, serious conflicts, overlaps and duplicative requirements within Federal OSHA regulations and the nation's building codes. OSHA establishes a fixed requirement for exit doors in all buildings and applies that 1972-73 standard to all buildings, regardless of age or use.⁶⁶ It makes all provisions retroactive without regard for building economies or use. Neither the Federal Act nor labor regulations provide a review mechanism whereby new construction plans can be made to conform to the required standards. Only after completion would the building be inspected and any notice of compliance be issued.⁶⁷ The cost of non-compliance after the fact is all too obvious. Flexible provisions which allow for building variations, a feature inherent in most state and local building codes, seem to be lacking. For example, the Federal Act requires all warehouses with combustible roofs or floors to have fire sprinkler systems even though a building use might not involve combustible materials or the building's shape, height and location make such an arbitrary retroactive requirement unnecessary.⁶⁸ So far, the Department's resolution of these problems or cooperation with the professions and code groups has not been publicized.⁶⁹

OSHA's preemption of this regulatory field and its resolution of the inherent problems of implementation will take years of effort. In the meantime, the Missouri statutes remain in a coextensive status with the broader federal regulations. The state regulations require that

65. American Institute of Architects, American Society of Civil Engineers, American Consulting Engineers Council, National Society of Professional Engineers, International Conference of Building Officials, and Southern Building Code Congress.

66. Goldberg, *The Occupational Safety and Health Act and the Building Codes*, 43 BUILDING STANDARDS 8, 11 (1974).

67. *Id.* at 9. Employers will be deemed guilty of noncompliance regardless of notice after inspection. *Id.* at 12.

68. *Id.* at 12.

69. *Id.* at 11.

adequate and safe joisting be provided⁷⁰ and that building projects, larger than single-family residences and higher than two-story structures, be provided with safe flooring, even though temporary,⁷¹ to protect the work in progress two stories below. Inspection is conducted by the local building official, fire chief, or Department of Labor and Industrial Relations. Thus, a large number of plants, warehouses, office buildings and mercantile establishments must be inspected during construction by those experts charged with enforcing local and state regulations which affect the completed project. Hopefully enforcement of the state-local statutes may improve OSHA practices.

D. *Public Health*

Achievement of public health goals is an evident objective in many of the safety code groups previously summarized. The two groups with the most public health oriented requirements are the employee health statutes⁷² and the occupational disease prevention statutes.⁷³ These regulations cover painting, exhaustion of fumes,⁷⁴ provision for clothes-changing rooms, showers and toilets,⁷⁵ avoidance of overcrowding,⁷⁶ dust control and ventilation,⁷⁷ and provision for respirators in places of noxious gases.⁷⁸ Inspection and enforcement of these statewide provisions are by the Division of Industrial Inspection of the Department of Labor and Industrial Relations.⁷⁹

The coextensive responsibilities in related topical areas of the Division of Health of the Department of Public Health are limited. The Division is not directly involved in health conditions in places of employment. Shower, toilet and ventilation facilities in hospitals, nursing homes, and ambulatory surgical centers are inspected annually by the Division. Plant inspections for health standard compliance may be limited to consumer foods, such as in beverage bottle plants. Prior to the state's reorganization, the Division of Health had inspection au-

70. MO. REV. STAT. § 292.490 (1969).

71. *Id.* § 292.500.

72. *See* note 57 *supra*.

73. MO. REV. STAT. §§ 292.300-.430 (1969). *See* note 59 *supra*.

74. MO. REV. STAT. §§ 292.100-.120 (1969).

75. *Id.* § 292.260.

76. *Id.* § 292.140.

77. *Id.* § 292.390.

78. *Id.* § 292.320.

79. *Id.* § 292.410.

thority over public water supply and solid waste matters. These duties are now performed by the Department of Natural Resources.

Hotel and motel public health requirements,⁸⁰ provide a model of progressive goal-oriented legislation. "Every hotel in this state shall be properly plumbed, lighted and ventilated, and shall be conducted in every department *with strict regard to health, comfort and safety* of the guests."⁸¹ This statute leaves little room for subjective interpretation about sanitary and working facilities. However the italicized phrase is flexible, allowing adequate means for future technological improvement without a need for code amendment. The same is true of the statutory requirements for sanitary water closets,⁸² public washrooms⁸³ and fumigation of towels and bedding.⁸⁴

The requirements for each of these would be most economically provided during the original construction period. However, not all hotel regulations are contemporary or economically feasible in existing buildings.⁸⁵

E. *Most Recent Enactments: Special Controls*

The most recent statewide statute enacted is an advanced type of pure building code, similar to those enforced by local governments. The 1973 "Mobile Homes, Recreational Vehicles-Uniform Standards Act"⁸⁶ provides for state inspection of the entire manufacturing process (but not the site installation). Inspection and approval are necessary for official certification that homes or vehicle units conform to an advanced form of performance standards. The Missouri Act provides that all mobile homes shipped to or manufactured within the state must meet the minimum construction code standards promulgated by the American National Standards Institute.⁸⁷

80. See note 32 *supra*.

81. MO. REV. STAT. § 315.120 (1969) (emphasis added).

82. *Id.* § 315.130.

83. *Id.* § 315.150.

84. *Id.* §§ 315.160-.170.

85. *Id.* § 315.140.

In all cities, towns and villages not having a system of waterworks, every hotel shall have properly constructed privies or overvaults to receive the night soil, the same to be kept clean and well ventilated at all times and free from foul odors, and shall be kept in a clean and sanitary condition. Separate compartments shall be furnished for sexes, each being properly designated.

Id.

86. *Id.* § 700.010-.085 (Supp. 1975).

87. *Id.* §§ 700.010(2), .015. The Public Service Commission must perform sufficient

Missouri enacted these regulations after it became widely known that the \$8,000-\$12,000 mobile home unit filled a third or more of the new housing needs in the state.⁸⁸ This legislation demonstrates a state's capacity for creating a regulatory basis for controlling housing and construction in areas generally beyond local government controls. Because mobile unit manufacture and sale are generally easy to locate, state agency regulation should prove to be relatively efficient. In addition, this Act represents a unique and flexible means for achieving statewide uniformity in health and safety goals for an area previously viewed as beyond regulation.

Another approach to a statewide problem concerns the general welfare of Missouri's disabled residents. Since November 1, 1973, whenever state or local government monies are utilized to build, repair or maintain public buildings and facilities, the structures must comply with specified statewide building code standards.⁸⁹ The legislation sets forth minimum standards for the following physical facilities: width and grade of sidewalks; slope, width, surface and railings of ramps; wheelchair accessibility of entranceways, elevators and toilets; safety provisions for steps and floors.⁹⁰ Where a physical hazard to the disabled is discovered, design and engineering arrangements must remedy it. Every state department, division, agency or instrumentality, as well as each local government which utilizes public funds for construction, is primarily responsible for enforcement of these standards.⁹¹

These two examples of state regulation and enforcement, mobile home regulation and building construction for handicapped, demonstrate that a uniform approach is efficacious where previous regulations and enforcement have been inconsistent, ineffective or non-existent.

inspections of manufacturing premises, MO. REV. STAT. § 700.040 (Supp. 1975), and must issue seals of compliance, *id.* § 700.020. The Division of Health shall promulgate tie-down standards and must approve all anchor and tie-down systems before they can be sold. *Id.* §§ 700.065, .075.

88. In 1973 new single-family home sales under \$20,000 were comprised of 91% (566,920) mobile-modular and 8% (53,000) site-built by subdividers. Homes costing under \$30,000 were supplied by site-building subdividers to the extent of approximately 40%. BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, CONVENTIONAL HOMES-CONSTRUCTION REPORTS (C 25-74-1) (Apr. 1974). Data for higher cost homes provided by economic consulting firm of Elrick & Lovidge, Inc. for Mobile Home Manufacturers Association of Chantilly, Virginia.

89. MO. REV. STAT. §§ 8.610-.623 (Supp. 1975).

90. *Id.* § 8.620.

91. *Id.* § 8.630.

III. CURRENT PRACTICES IN MISSOURI

A. *Local Building Codes*

Building code regulations at the local level do not provide a uniform system of regulation.⁹² The Kansas City metropolitan area illustrates the significant variation within one region. Of the thirty municipalities in the Kansas City area found to have enacted specific form building codes, nineteen comply with the International Council of Building Officials Uniform Code, six followed the Building Officials and Code Administrators International (BOCA) Basic Code, two adopted the National Building Code, one followed the FHA Code and one enacted its own code.⁹³ The variations resulting from local modifications suggest⁹⁴ that there are possibly twelve to twenty-four different code models in the Kansas City region. Nationally, a similar condition exists, with 5,500 to 8,830 different building codes in use.⁹⁵ Such conditions did not cause any problems or receive much publicity when costs were lower and most of the construction activity occurred within the code-regulated areas. Today, however, with the outward migration to suburbia and the rural areas surrounding the older cities, growth and expansion are outstripping the local and county government's ability to protect its citizens and provide services. In places which recognize the urgency for effective regulation, the dual problems of keeping the codes current and employing qualified building inspection personnel are not consistently or persistently resolved. Too often, a town's local inspection official holds several official positions in addition to maintaining other full time employment.

B. *Extent of Local Regulation Activity—Statewide*

The dimensions of regulation at the local level need to be identified

92. MO. DEP'T OF COMMUNITY AFFAIRS, FREEDOM OF CHOICE IN HOUSING 38 (R. Freilich director 1971).

93. See generally ACIR, *supra* note 7.

94. The modifications of model codes originate in the city council as a result of local construction experiences, tradesmen and craftsmen practices and variations in the interpretations of standards by building inspectors. ACIR, *supra* note 7, at 5, 65.

95. Bendes, *Building Codes are Like Rabbits or 1 + 1 + 1 + = 8830*, AUTOMATION IN HOUSING 40 (1970). See also BUILDING CODE UNIFORMITY, *supra* note 10, ch. 1, App. A. During the first survey it was discovered that one fourth-class city inspector was claiming to enforce a county building code, a nonexistent regulation. In a third-class city, the commissioner was enforcing a "Missouri State Building Code," another ethereal document. Too often, the officials questioned simply did not know whether there was a code in force. *Id.* at 37-38.

so that the prior analysis may be relevantly related to a uniform concept. There are approximately 894 municipal governing bodies and 114 counties in Missouri.⁹⁶ The census records reflect a more complete picture. In the tabulation of the 1970 census, there were nearly 1,000 locations categorized as an incorporated place or as an unincorporated place with a population over 1,000 persons. The census shows forty-eight incorporated places with a population over 10,000, twelve of which were constitutional charter cities. There were 114 counties plus the special jurisdiction of St. Louis City for a total of 115.⁹⁷

Within the city classifications a pattern of code enforcement can be discovered.⁹⁸ Twenty-six and eight-tenths per cent of the tabulated cities and villages (only one-third of the total) employed either a building commissioner or utility inspector to guard the health and safety of occupants of newly constructed buildings under some form of code regulation. This verifies the expected result that populous cities seek to regulate building and construction activities. However, the enforcement efforts in the 384 cities and villages without a building code officer are open to serious question. Nearly one-third of all cities employed only a fire chief for safety purposes, presumably for fire protection matters strictly; 241 places, 41.2% of total governments, employed neither a building commissioner nor a fire chief, and showed no other official whose title would indicate an activity connected with building and construction (e.g., engineer). Whether such cities and villages hired non-public inspection services is open to speculation.

The picture which emerges indicates an inadequacy of health-safety regulatory activity in areas with populations from 200 to 9,999 (the limit historically utilized as the economical unit for adoption as a home rule charter city).⁹⁹ Approximately 846 municipal governing bodies are within this classification range. These are the population areas which have demonstrated the most significant growth and industry location patterns in the last twenty years. These outlying areas, however, developed without the full benefit of health and safety inspection personnel. Current tabulations indicate that, today, after 75% to 500%

96. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF GOVERNMENTS (1972).

97. OFFICIAL MANUAL, STATE OF MISSOURI (1975-76). See note 11 *supra*.

98. Statistics for the author's tabulation were obtained from the Missouri Municipal League, Missouri Municipal Officials Directory (1975-76) and are summarized in BROWN, BUILDING CODES AND CONSTRUCTION STATUTES: A STUDY OF ONE STATES USE OF ITS POWERS 13-14 (1974).

99. Missouri cities may adopt a home rule charter if they have 5,000 people. MO. CONST. art. VI, § 19.

increases in total population, and after becoming the locations of major industrial employers, most Missouri third- and fourth-class cities lack building and/or fire inspectors.¹⁰⁰

In the least populated places, the lack of regulation is all too evident. As a jurisdiction acquires more people, it gradually develops municipal controls. To escape these local regulations, builders and contractors moved their activity to land beyond the regulated jurisdiction's boundaries. This happened frequently, as evidenced by the out-migration of city-based business to the suburban fringe, by the mobile homes which grace the rural landscape because they are zoned out of many cities and by the expansion of formerly small villages. Major employer-industries will locate within a village, particularly where land costs are low, taxes negligible and local regulations non-existent. Such conditions foster plant relocations, thereby raising health-safety-welfare problems for future generations. The land speculators and home build-

100. For example, in the Standard Metropolitan Statistical Areas (SMSA's), one finds an uneven pattern of regulation in growing communities. Belton in Cass County, a fourth-class city with a fire chief and city inspector grew by nearly 8000 in 10 years (4,897 to 12,179 in 1970) and possesses three major employment industries. Claycomo in Clay County, a village of 1,841 residents in 1970, grew by 400 (29%) from 1960-1970 and 800 (133%) in 1950-60, and presently employs a fire chief only. A Ford Motor Company assembly plant in the area created the need for new housing in the general area.

Eureka in St. Louis County grew by 2,200 people (1960-1970). The street commissioner also served as the building commissioner. Eureka has three industrial employers (60 employees). Fenton in St. Louis County has no inspectors even though its population grew from 207 (1950) to 2,275 (1970) with 21 industries (employing 11,500) located there. Harrisonville in Cass County doubled (from 2,530 in 1950 to 5,052 in 1970) in population and has 10 industries which employ 255 workers but has only a fire chief and a city engineer. Hazelwood, a home rule charter city in the St. Louis metropolitan area, has experienced a tremendous population increase (from 336 in 1950 to 14,082 in 1970) and is the location of 24 industries which employ over 5,800 workers but still has one fire chief as the only official concerned with health and safety in private buildings. Lee's Summit in Jackson County experienced a population increase of 535% over the 20-year period (2,554 to 16,230) but to oversee its 17 industries which employ 6,200, the community retains merely a fire chief, a health officer and a city engineer. Liberty, a special charter city in Clay County, whose population went from 4,709 to 13,704 (1950 to 1970), has both a fire chief and building inspector for inspection of its 12 industry locations (2,000 employees); Smithville in Clay County, a fourth-class city retaining a fire chief and a building commissioner, has no significant industry employers yet its population demonstrated a 46.5% increase (947 in 1950; 1,254 in 1960; 1,785 in 1970). Warrenton's population has increased by only 473 in 20 years yet this fourth-class city in Warren County has five major employers (total employment population 503) and retains a fire chief and a building commissioner. In comparison, Willard, a fourth-class city outside of Springfield in Greene County has four major employers (300 employed) and showed a 200% increase in population in only ten years (from 357 in 1960 to 1,018 in 1970), and yet to date has neither a fire chief nor a building commissioner. OFFICIAL MANUAL, STATE OF MISSOURI 1975-76; OFFICIAL MANUAL, STATE OF MISSOURI 1973-74; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF GOVERNMENTS (1972).

ers follow the industrial development because they are able to operate unfettered. Local regulations may not come into existence until after a substantial number of new residents become alarmed by recognized hazards in their jobs or homes, or until a disaster actually occurs.

More acute hazards can be expected on the outskirts of moderate-sized, third-class cities which, although regulated themselves, may have few, if any, governmental entities on their boundaries. The hazard of unregulated construction exists in and around communities like Carthage, Marshall, Sedalia and Warrensburg (third-class cities with populations between 11,000 and 23,000) which demonstrated growth of industry and employment.¹⁰¹ As such cities become attractive to industry for new plant locations, the presence or absence of local controls may be a significant factor in site selection. It does not seem likely that they be able to oversee health, safety and welfare concerns if the new developments are just beyond their boundaries, only to be incorporated after the fact. Carthage, Marshall, Sedalia and Warrensburg are part of a study on significant trends in population and employment in small Western Missouri cities (10,000 to 50,000 populations) outside of metropolitan areas.¹⁰² They represent the regulated cities which lack governmental regulations beyond their borders but have highway accessible sites at the rural fringe. From 1960-1970, the population in these Missouri cities changed only 5.4%,¹⁰³ but individually, they showed interesting growth and employment patterns. Carthage lost nearly 200 in population (11,076) but exhibited a 4.4% growth in jobs (3,962 to 4,137). Their largest percentage changes in employment came in manufacturing, services and education. Joplin exhibited gains from 11% to 75% respectively in manufacturing, public administration and education with an average change in employment of 5.9%

101. MO. DEP'T OF COMMERCE, statistical survey (1973-74).

102. Pickett, *Small Cities of the Tenth District: Population and Employment Changes 1960-70*, MONTHLY REV. 16 (Fed. Res. Bank, Kansas City, Mo., May, 1974).

103. *Id.* at 17-22. This change was 4.4% below the growth for the total Federal Reserve District which covers Kansas, Nebraska, Wyoming, Colorado, northern New Mexico, western Missouri and most of Oklahoma, and 8.1% below the percentage growth for the nation as a whole (total U.S. change in population was 13.3% while total for U.S. SMSA's was 23.5%).

The cumulative statistical findings indicate that about one-third of the Tenth Federal Reserve District small cities are growing as fast or faster than the aggregate national population figures. "Overall, District small cities expanded manufacturing employment at a considerably higher rate than the national average . . . The future of small cities is uncertain. Some population experts have suggested that a trend away from urban living may be developing. If that proves to be the case, the expansion of job opportunities in small cities is crucial." *Id.* at 24.

without a noticeable change in population over the ten-year reporting period. Marshall increased its population by 23.8% (11,847) and its employment by 20.5% primarily in the areas of manufacturing, construction and trade (11.8%; 50.3%; 17.6% respectively). Sedalia had 341 employed in manufacturing, a gain over 10 years of 21%, 132 employed in trade (6.3%), and 234 employed in education (82.7% increase) at the same time it lost 4.3% in population (1970 population of 22,847). Warrensburg registered a huge 35.5% gain over the decade (13,125 in 1970), recording the significant employment rise of 69.1% with increases in construction (10.3%), trade (388 employed for a 61% rise), and public administration (69 for a 57.5% change).¹⁰⁴

CONCLUSION

Missouri is beginning to realize the potential flexibility of codes even though its prior use and application of them was restricted to health and safety in an original limited conception.¹⁰⁵ The limited concept changed. In many ways, the original views of codes have since become dated under present expansions of permissible need-solving applications of the state's police powers. Yet, those expansions did not keep pace with the greater strides in other legal areas for protecting personal rights against injury and property damage. While building code restrictions on property use were being tested when crowd safety was involved, tort concepts to protect one individual from the negligence of another were being refined. It is time to realize that the original idea of protection of the masses from safety and health hazards set the stage for the statewide protection of the general welfare of all individual property owners and their families in their own dwellings and in places of shopping, amusement and work. The parochial concern for groups matured into a realization that a concern for individuals serves the

104. *Id.* Tables 1-4.

105. The building laws should provide only for such requirements with respect to building construction and closely related matters, as are absolutely necessary for the protection of persons who have no voice in the manner of construction or the arrangement of buildings with which they involuntarily come in contact. Thus, when buildings are comparatively small, are far apart and their use is limited to the owners and builders of them, so that, in case of failure of any kind they are not a source of danger to others, no necessity for building restrictions exist. But as these buildings are placed closer to one another or on the line of a neighbor's property, or as they are used first as a matter of necessity, by other persons than the owners, as in the case of guests at hotels, customers in business buildings, workers in factories, tenants in multiple buildings, etc., then increasingly greater requirements are needed to secure to the occupants and to neighbors structural safety, security against fire, sufficiency of light and air to preserve health, etc.

R. Miller, reported in P. BASELER, BASIC PRINCIPLES OF BUILDING CODES, (unpaged) (BOCA Local Building Regulations Monograph 4, 1963).

state's compelling purpose of providing a safe, healthful and viable living environment. Codes and statutes are more than local controls. They can be a broad spectrum of flexible state powers for resolving stifling problems.

Precedents for creative utilization of the state's broad powers do exist in Missouri. One of them concerns housing safety at lower costs. "The Housing Authorities Law"¹⁰⁶ provides:

. . . that the clearance, replanning, and reconstruction of the areas in which *unsanitary* and *unsafe housing conditions* exist and *providing safe and sanitary dwelling accommodations* for persons of low income are public uses and *purposes* for which public money may be spent and private property acquired and are *governmental functions of state concern*.¹⁰⁷

Subsequent sections of the above Act contain health and safety building standards to identify target areas.¹⁰⁸ The Missouri Housing Authorities Act is a statewide response to a recognized deficiency in metropolitan housing. The deficiencies occurred when private and public interests lacked the incentive or the power to build low-cost homes. Employing the inducements of federal, state and local funding, municipal governments are now encouraged to resolve their problems.

Building and construction statutes are legislative tools possessing enough flexibility to resolve specific public problems. With a centralization of the statutes, builders, contractors and owners might begin to find compliance less onerous and construction time shortened. Legislators might also recognize the broader potentials of the police power. Collectively, we should become aware of problems of statewide pervasiveness. Comprehensive solutions may grow from this awareness.

106. MO. REV. STAT. §§ 99.010-.230 (1969).

107. *Id.* § 99.030 (emphasis added).

108. Local governments, when deciding to create a housing authority, must justify their enactment upon findings of unsanitary or unsafe inhabited dwellings or a shortage of safe and sanitary low-cost housing. It may consider in its findings many land use planning and housing code factors. This enactment blends the features of both types of regulations and, therefore, defies a strict classification. *Id.* §§ 99.040, .130.

NOTES

