



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

ROY COOPER
ATTORNEY GENERAL

Reply to: ROBERT D. CROOM
INSURANCE SECTION
(919) 716-6610
FAX: (919) 716-6757

June 3, 2009

Shane Phelps
North Carolina Code Officials
Qualification Board
1202 Mail Service Center
Raleigh, NC 27699-1202

Re: Building Inspectors Performing Construction Work on County and City Buildings

Dear Shane:

Thank you for your question regarding whether a city or county building inspector can perform construction work on city or county buildings within his jurisdiction. Apparently, the North Carolina Code Officials Qualification Board has received a few calls from jurisdictions that, due to economic circumstances, are interested in having inspectors perform other duties, such as construction work on city or county buildings, in addition to their regular duties as code enforcement officials.

As you are aware, the duties and responsibilities of city and county building inspectors are set out in separate chapters of the General Statutes. (N.C.G.S. § 153A-350 *et seq.*; N.C.G.S. § 160A-411 *et seq.*) However, the specific statutes that govern conflicts of interest for building inspectors are essentially identical. "No member of an inspection department shall be financially interested . . . in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within [a city's or county's] territorial jurisdiction or any part thereof, or in making plans or specifications therefor." (N.C.G.S. §§ 153A-355 and 160A-415 (2009))

The factual scenario asked about, where an inspector's duties would be changed to also include construction work on city or county buildings, would not be permitted under either N.C.G.S. §§ 153A-355 or 160A-415. A change in the building inspector's job duties to include

construction work would mean that his employer would also be compensating him for his construction work. Although there is no legal definition for “financially interested,” receiving compensation for one’s work would clearly fall under the plain meaning of being financially interested. Further, if an inspector performs construction work, he is furnishing labor for the construction of a building. Therefore, if an inspector had his job duties changed to include the additional duties of doing construction work on city or county buildings, he would be financially interested in furnishing labor for a building within the city’s or county’s jurisdiction, which is prohibited. The statutes’ prohibitions also extend not only to construction but to the maintenance or alterations of buildings as well.

You additionally asked if the cities or counties performing the work could contract with outside jurisdictions to come in and perform the necessary inspections. The answer to this question is also no.

The [statutes are] a flat prohibition intended to prevent conflicts of interest when a member of the inspection department has any financial interest in labor, materials, or appliances which are used in any building within the city’s [or county’s] jurisdiction.

...

The fact that another inspector may actually inspect the work is immaterial. The purpose of the [statutes] is similar to that condemned by *G.S. 14-243* [sic]. The condemnation of the conduct embraced within *G.S. 160A-415* [and *G.S. 153A-355*] is a part of the public policy of the State to remove from public officials the temptation to take advantage of their position.

(51 Op. Atty Gen. N.C. 7 (1981)) Having another jurisdiction perform the inspections on buildings does not change the flat prohibition contained in the statutes and as a practical matter it is difficult to see how this would provide any cost savings to the inspector’s jurisdiction.

You finally asked if the inspectors performing the work could turn in their certificates and become part of the city or county “maintenance department” while inspectors who kept their certificates performed the inspections. If I understand your question correctly, you are essentially asking if an inspector could stop being an inspector to begin working for the city or county in a capacity where he would be furnishing labor for the construction, alteration or maintenance of buildings. This would not be prohibited by statute. However in such a situation, if the former inspector wanted to return to the inspections department, upon his return he would be prohibited from performing inspections for the owner, developer, contractor, or project manager of the project to be inspected if he had worked for them within the last two years. (N.C.G.S. §§ 153A-

June 3, 2009

Page 3

355(1) and 160A-415(1)) This would mean that the former inspector would be prohibited from performing any inspections on any city or county buildings for two years following his return to the inspections department.

I hope that this has answered your question regarding whether an city or county building inspector can perform construction work on city or county buildings within his jurisdiction. If this response raises any additional questions, please let me know.

This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Croom". The signature is written in a cursive style with a large, prominent initial "R".

Robert D. Croom

Assistant Attorney General