

**Michigan Department of Licensing and Regulatory Affairs
Request for Declaratory Ruling**

March 26, 2020

To: Ms. Orlene Hawks, Director
Department of Licensing and Regulatory Affairs (LARA)
611 W. Ottawa
P.O. Box 30004
Lansing, MI 48909

Certified Mail No. 7017 1450 0001 2621 0519

APPLICANTS:

Michigan Air Conditioning Contractors Association (MIACCA) Ph: (866) 269-8486
602 W. Ionia
Lansing, MI 48933

Mr. Phil Forner Ph: (616) 299-0275
POB 296
Allendale, MI 49401
Mechanical License No. 7108404 / Residential Builders License No. 2101191518

STATEMENT OF FACTS:

- A) The Construction Code Commission (Commission) is within LARA but shall exercise its statutory functions independently of the director.
- B) As designated by the LARA Director, the Bureau of Construction Codes (Bureau) administers and enforces the Stille-DeRossett-Hale Single State Construction Code Act (SSCCA), 1972 PA 230, MCL 125.1501 *et al* and the state construction codes adopted thereunder throughout the state except in those government subdivision jurisdictions that have been approved by the Commission to assume from the LARA Director the administration and enforcement of the SSCCA and the state construction codes within their political boundaries.
- C) MIACCA is a registered association of Michigan mechanical contractors whose contractor of record is licensed by the Bureau to perform work regulated by the state construction codes.
- D) Mr. Phil Forner (Licensee) is a licensed mechanical contractor and residential builder; which is regulated by the Bureau. The Licensee is also a member of MIACCA.
- E) The Licensee is the mechanical contractor of record for Allendale Heating Company Inc. and the licensed residential builder for the Allendale Heating Company Inc. residential builder company license. The Licensee could lose his licenses, be fined, and or jailed, if required state construction code permits are not obtained.

- F) The Licensee performs work that requires state construction code permits in numerous government subdivisions that were approved by the Commission to administer and enforce the state construction codes and parts of SSCCA within their jurisdiction. Those governmental subdivisions include the City of Grand Rapids, City of Muskegon, Newaygo County, Holland Township, and Polkton Township, along with other areas that are under the State of Michigan jurisdiction. A copy of the application for mechanical permit for each of the government subdivisions listed is attached hereto.
- G) Each of the attached applications for mechanical permit are different, some are one page long and others are two pages long, all using differing terminology to describe what covered work a state construction code permit is to be applied for.
- H) It costs the Licensee and other licensees time and money to figure out how to complete each different application for permit satisfactorily. When an application is not completed to the governmental subdivision's satisfaction, the application is returned; which not only delays the work required to be permitted but also costs additional time and money.
- I) The Licensee also performs work that requires permits in different governmental subdivisions that contract the same private organization to receive applications permit. Those applications are the same except for the governmental subdivision identity. It costs the Licensee less time and money when the same application is used for multiple jurisdictions along more uniform enforcement of the state construction codes.
- J) The Commission did not prescribe any of the attached applications for permit.
- K) On October 10, 2018, the Commission reviewed the request of MIACCA for a statewide application for mechanical permits. The Commission stated:
 - Following discussion, a MOTION was made by Vice Chairperson Misiewicz and SECONDED by Commissioner Danielak to table MIACCA's proposed Universal Michigan Mechanical Permit Application indefinitely. MOTION CARRIED
- L) The Commission when authorizing government subdivisions to administer and enforce the State of state construction codes and parts of the SSCCA in 2017, 2018, and 2019 did not prescribe the application for permit to be used by those governmental subdivisions. See attached Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 et seq., denials made by LARA on February 27, 2020, Ref. Nos: R043696-021920, R043700-022020, and R043701-022020 (copies attached).
- M) Several members of the Commission have indicated privately that given Executive Order 2017-3 and or lack of Bureau direction, they do not believe the Commission has the legal authority to prescribe the form on which an application for a state construction code permit is to be made.
- N) Since October 10, 2018, the Commission has not prescribed any form on which an application for a state construction code permit is to be made.

- O) The Bureau published the Commission approved form for those governmental subdivisions desiring to administer and enforce the state construction codes and parts of the SSCCA, see: Application to Administer and Enforce, BCC-246 (Rev. 09/17).

LAWS / RULES / ORDERS:

- Michigan Administrative Rule R 338.81; and
- Administrative Procedures Act (APA) 1969 PA 306, MCL 24.201 *et al*; and
- Executive Order 2017-3; and
- SSCCA, including but not limited to, MCL 125.1510(1); which states in relevant part:

Except as otherwise provided in the code, before construction of a building or structure, the owner, or the owner's builder, architect, engineer, or agent, shall submit an application in writing to the appropriate enforcing agency for a building permit. **The application shall be on a form prescribed by the commission** and shall be accompanied by payment of the fee established by the enforcing agency. The application shall contain a detailed statement in writing, verified by affidavit of the individual making it, of the specifications for the building or structure, and full and complete copies of the plans drawn to scale of the proposed work. ... (Emphasis added.)

ISSUE:

The Commission is not prescribing the form on which applications for state construction code permits are being submitted to enforcing agencies. Does MCL 125.1510(1) require all applications for a state construction code permit to be on a form prescribed by the Commission?

ANALYSIS AND CONCLUSIONS:

The application form for a state construction code permit that is used by every enforcing agency, by law, must be prescribed by the Commission.

The SSCCA and the construction codes promulgated thereunder apply throughout the state, MCL 125.1508(1). The Commission has all powers necessary or convenient to carry out and effectuate the purposes and provisions of the SSCCA, MCL 125.1505(1). Multiple government subdivisions have assumed from the LARA Director the responsibility to administer and enforce the state construction codes and parts of the SSCCA as approved by the Commission pursuant to MCL 125.1508b. Like with the Commission provided form titled "Application to Administer and Enforce", BCC-246 (Rev. 09/17), pursuant to MCL 125.1508b(6), the Commission is required to prescribe the form on which an application for a permit is to be made pursuant to MCL 125.1510(1). The Commission has the authority to promulgate an administrative rule that prescribes the form on which applications for state construction code permits are to be made, MCL 125.1506. Executive Order 2017-3 does not apply to the Commission or the Commission's ability to prescribe the application form for permits.

The Commission on its form titled "Application to Administer and Enforce", BCC-246 (Rev. 09/17), correctly notes that the government subdivision sets the fees for the permits pursuant to MCL 125.1510(1) and does not request that the applying government subdivision provide the Commission with its applications for permit.

Furthermore, under the current incorrect practice, each government subdivision must come up with its own application for permit, which typically requires review by their own legal department. Having the Commission prescribe the application forms to be used would then save them money by only requiring the government subdivision to fill in the dollar amount of the fee to be charged for the permit in accordance with MCL 125.1510(1).

Additionally, as noted on the attached applications, there are some governmental subdivisions that list certain item for which an application for a permit is required while other governmental subdivisions omit those same items. Having the Commission prescribe the form on which an application for a permit is submitted will also help ensuring more uniform enforcement of the state construction codes in every government subdivision.

The Licensee and other mechanical contractors continue to suffer loss of time and money by having to figure out how to satisfactorily complete the various applications for a permit from the different governmental subdivisions.


As demonstrate herein, the Commission is either not aware of this responsibility or unwilling to prescribe the form on which an application for a permit is made in Michigan when the SSCCA and or the statewide construction codes are administered and enforced. The Commission provides its form for a government subdivision desiring to administer and enforce the state construction codes, so there is no legitimate reason why the Commission cannot provide the form for which applications for state construction code permits. Having the LARA Director issue this declaratory ruling would help the Commission understand is duty and improve construction efficiency and uniform enforcement in this state.

THEREFORE given the above it is respectfully requested that the LARA Director, under the authority provided for in MCL 24.263 and Michigan Administrative Rule R 338.81, issues a declaratory ruling stating that the application for a permit shall be on a form prescribed by the Commission and instruct the Commission and the Bureau to begin that process of having the Commission prescribe the form on which applications for permit are used in Michigan.

CERTIFICATION:

The undersign hereby certifies the existence of the actual state of facts set forth and the submission of all relevant facts known thereby.

Date: 3-25-2020

Signature: 
M.J. D'Smith, MIACCA Executive Director

Date: _____

Signature: _____
Phil Forner, Licensee