



STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

OFFICE OF STATE FIRE MARSHAL

COL. PAUL W. FONTENOT
DEPUTY SECRETARY

DWIN W. EDWARDS
GOVERNOR

MEMORANDUM

October 19, 1994

TO: All District Supervisors

FROM: Michael F. Cammarosano
Administrative Director

RE: Attorney General's Opinion

Attached is a copy of the Attorney General's Opinion 94-360 concerning Day Care Centers and capacities. As you will see the Attorney General says that the agreement between this Office and DSS is not valid and that this Office cannot delegate our authority to other agencies.

In keeping with the Opinion of the Attorney General, we will return to our procedure of setting capacities by utilizing the Life Safety Code Chapters as they pertain to Day Care Centers.

If DSS decides to pass rules which are more prohibitive, they will then have authority to do that under their own regulations.

Please inform all Inspectors under your supervision and ask them to govern themselves accordingly.

c: Fire Marshal Fredieu
Mike Barron - Staff Attorney
Steve Phillips - DSS
Jerry Jones - Chief Architect SFMO

MEMAGOP

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5150 FLORIDA BOULEVARD, BATON ROUGE, LA 70806
(504) 925-4911 ARSON TIP LINE 1-800-272 8310



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE
Baton Rouge
70804-9005

JULY 20 1994

OPINION 94-360

OPINION 94-360

61 LAWS-General

LSA-R.S. 46:1413(C)(3); LSA-R.S. 1:3;
LSA-R.S. 46:1413(B)(1) and (2);
R.S. 40:1561 through 1636;
LSA-R.S. 46:1413(W)

Reviews validity of contract between the State Fire Marshal and the Department of Social Services with respect to the licensing of certain day care facilities.

Ms. Nona DiCarlo
Louisiana Advisory Commission on Child Care
1932 DiCarlo Drive
Chalmette, LA 70043

Dear Ms. DiCarlo:

This office is in receipt of your opinion request directed to Attorney General Richard Ieyoub. The request has been assigned to me for research.

In your letter, you have expressed concern regarding the legal ability of the Department of Social Services to set the capacity limits for certain day care facilities. Your concern arises because of a written agreement executed between the State Fire Marshal and the Department of Social Services.

The agreement states, in pertinent part:

As indicated by the above, the regulations for setting the minimum space requirements, enforced by both the State Fire Marshal and the Department of Social Services are the same. Therefore, by mutual agreement between the State Fire Marshal and the Department of Social Services, in an effort to save time, funds and misunderstanding, only one agency shall make the measurements for setting the licensed capacity for both Class A and Class B licensed day care centers. (Emphasis added).

You question the validity of this agreement, and raise two inquiries concerning same, discussed herein below.

ISSUE I

Does the Department of Social Services - Bureau of Licensing have the jurisdiction to set capacity loads for Class B child care facilities?

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With respect to Class B facilities, LSA-R.S. 46:1413(C)(3) governs and provides:

The standards for fire and safety promulgated by the office of state fire marshal shall regulate the following:

* * *

(3) minimum space requirements.

Use of the word "shall" is mandatory. LSA-R.S. 1:3. It is the responsibility of the state fire marshal to set these minimum space requirements, which responsibility may not be delegated in opposition to statutory rule.

Further indicia of the state fire marshal's duty to set capacity limits is contained within the language of LSA-R.S. 46:1413(B)(1) and (2), providing:

B. In addition, all child care facilities with Class B licenses shall comply with the following rules and regulations:

(1) All standards of fire and safety promulgated by the office of state fire protection of the Department of Public Safety and Corrections, in accordance with 40:1561 through 1636.

(2) All standards of fire and safety provided under the National Life Safety Code or such other national code or parts of such codes as promulgated by the Office of State Fire Marshal of the Department of Public Safety and corrections, in accordance with R.S. 40:1561 through 1636.

Within the National Life Safety Code mentioned above are the standards defining facility capacity limits. Pursuant to LSA-R.S. 46:1413(B)(2) quoted above, the state fire marshal must set these capacity limits. This responsibility may not be delegated to the Department of Social Services absent statutory authority. We further find no other provision of law which would give concurrent authority to the Department of Social Services regarding capacity limits.

However, a close reading of the agreement entered into between the state fire marshal and the Department of Social Services reflects that the Department of Social Services is only

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empowered to take the measurements of each facility. This office is of the opinion that the Department of Social Services is acting as an agent for the state fire marshal in this respect. Under the terms of the agreement, the state fire marshal retains the authority to set the capacity limits, and for this reason we find the agreement permissible under law. However, the Department of Social Services may not superimpose its own capacity limits, or take measurements that fail to comply with the regulations promulgated by the state fire marshal.

ISSUE II

Does the Department of Social Services - Bureau of Licensing have the authority to enforce the space requirements in Class "B" child care facilities at 35 square feet when it is not written as law in the Act or the Minimum Standards?

LSA-R.S. 46:1413(N) governs our response, and provides:

N. Child-staff ratios and minimum space requirements shall be enforced by the Department of Health and Hospitals or the Department of Social Services, as well as the state fire marshal.

We refrain from addressing your specific inquiry regarding the 35 square foot limitation. We reiterate that the Department of Social Services has the authority to enforce capacity limits as they are established by the state fire marshal. Again, the Department of Social Services is without authority to unilaterally set capacity limits.

If you have an objection concerning the capacity limits as they are presently being enforced by the Department of Social Services, you should consider exhausting all administrative remedies which may be available to you.

Very truly yours,

RICHARD P. IEYOUS
ATTORNEY GENERAL

BY: 
KERRY A. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams 0070y

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EDWIN W. EDWARDS
GOVERNOR

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

OFFICE OF STATE FIRE MARSHAL

COL. PAUL W. FONTENOT
DEPUTY SECRETARY

October 19, 1994

Ms. Jeanette Boggs, Vice President
LA Professional Association of
Child Care
6136 Old Scenic Highway
Zachary, Louisiana 70791

Dear Ms. Boggs:

In answer to your letter of October 12, 1994 I offer to you the following.

- 1) This office by letter has informed all of the offices of this opinion and asked that they begin measuring Day Care Centers using the Life Safety Code 101 recommendations.
- 2) See above.
- 3) We have not met with DSS but have informed them by letter that we would begin measuring Day Care Centers again.
- 4) We do not know of any action taken by DSS.

As to the second part of your letter where you ask that this office contact the 1600 plus licensed Day Care Centers of this opinion and change, i must tell you we have no way of doing this. This office does not have a list such as it would take to do this mail out. I must also add that we will measure and set capacities, it is then up to the center to request from DSS an increase in their license. We cannot dictate to a facility how many children they can keep, we will only tell them the maximum the building will keep according to the Life Safety Code. Further more if any of these Centers are covered under any other provisions of DSS or other Agencies which might restrict numbers, we cannot override their laws. If they choose not to hire proper staff to meet proper ratios then they would also be prohibited from having that many children.

We will work with your Agency, DSS and the centers to meet our obligations under the Law. We will aid you and your Centers by doing our inspections and measurements but we cannot dictate to DSS to increase numbers. Those requests must come from the individuals to DSS.

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October 19, 1994

Ms. Jeanette Boggs, Vice President:

You also ask in your letter for a copy of the agreement between this office and DSS as it pertains to the measuring of facilities as stated in the decision. I do not have this document. If memory serves me correctly, DSS officials have this in their possession and could supply this to you.

Your final question concerns the charges by Fire Alarm Companies for annual inspections of manual fire alarm systems in Day care Centers and the need for such inspections and fees.

The Life Safety Code 101 Chapter 7 requires that the manual fire alarm systems be inspected on an annual basis by qualified licensed persons. We do license these companies and try to ensure their integrity. We monitor them as much as possible and in cases where we find problems, we take punitive actions. This office does not govern the fees that these companies charge. It is solely up to the consumer to shop around and find the best prices for the services performed.

I hope we have been able to help you with these answers. Please let me know if we can be of any assistance.

Sincerely,



Michael F. Cammarosano
Administrative Director

MFC:eg

c: State Fire Marshal Fredieu →
Mike Barron - Staff Attorney
Steve Phillips - DSS

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EDWIN W. EDWARDS
GOVERNOR

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

OFFICE OF STATE FIRE MARSHAL

COL. PAUL W. FONTENOT
DEPUTY SECRETARY

MEMORANDUM

December 2, 1994

TO: All District Supervisors
and Inspectors

FROM: Michael F. Cammarosano
Administrative Director

RE: Day Care Inspections

Recently I sent out a letter stating that we would, because of an Attorney General's opinion, resume measuring Day care Centers for occupant loads.

I thought I was clear in stating we would only be setting the maximum occupant load for the facility. We are NOT setting capacity for licensing. Our occupancy numbers include children and staff while D.S.S. licenses these facilities for the number of children only.

Be sure that when filling out the inspection forms you put "Total Occupancy Load." DO NOT put anything on your report about licensing load. If you do find a facility which is licensed for more children than the occupancy load will allow, you will need to write it up.

Remember, we are NOT the licensing agency. We are only checking the facility and measuring for life safety features. D.S.S. is the licensing authority and they, and only they will set the number of children allowed.

If you have a problem with this memo, please call me immediately.

MFC:eg

c: Steve Phillips

DAYCMEM

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