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October 28, 2008

John A. Danaher, III
Commissioner
Department of Public Safety
1111 Country Club Road
Middletown, CT 06457

Dear Commissioner Danaher:

You have requested my informal advice on the requirements of Section 78 of Public Act 07-242.¹ You state that this public act directs the State Building Inspector and the Codes and Standards Committee to revise the State Building Code (Code) to require that certain building construction projects to meet energy conservation standards. You further state that Section 78 of Public Act 07-242 requires that the provisions of the Code apply to certain buildings if constructed after January 1, 2009. You have advised me that due to the complexity of the revisions and the regulation adoption process, the revisions to the Code will not be effective on January 1, 2009. You ask me whether the provisions of Section 78 of Public Act 07-242 can be implemented absent adoption of the revised Code. My answer is no.

Section 78 of Public Act 07-242 states in part as follows:

(b) Notwithstanding subsection (a) of this section, the State Building Inspector and the Codes and Standards Committee shall revise the State Building Code to require that any (1) building, except a residential building with no more than four units, constructed after January 1, 2009, that is projected to cost not less than five million dollars, and (2) renovation to any building, except a residential building with no more than four units, started after January 1, 2010, that is projected to cost not less than two million dollars shall be built or renovated using building construction standards consistent with or exceeding the silver building rating of the Leadership in Energy and Environmental Design's rating system for new commercial construction and major renovation projects, as established by the United States Green Building Council, or an equivalent standard, including, but not limited to, a two-globe rating in the Green Globes USA design program. The

¹ Section 78 of Public Act 07-242 is codified in the 2008 Supplement of Conn. Gen. Stat. 29-256a.

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inspector and the committee shall provide for an exemption for any building if the Institute for Sustainable Energy finds, in a written analysis, that the cost of such compliance significantly outweighs the benefits.

From discussions with members of the Codes and Standards Committee and the State Building Inspector, I have learned that a number of issues will need to be resolved before the requirements of Section 78 of Public Act 07-242 can be implemented. Among some of the issues to be resolved are:

(1) What is included in the cost for a building "constructed . . . that is projected to cost not less than five million dollars"?

(2) How is "constructed" defined?

(3) What is included in the cost for "renovation to any building . . . that is projected to cost not less than two million dollars"?

(4) How is "renovation" defined?

(5) What body determines what "an equivalent standard" is?

(6) What is the "exemption process"?

(7) What will the "written analysis" consist of?

(8) What baseline will be used to determine when "the cost of such compliance significantly outweighs benefits"?

(9) Is the Institute for Sustainable Energy positioned to conduct such reviews, via staff, funding and technical expertise?

(10) What is an applicant's appeal process if an exemption is denied?²

These representative issues are significant and must be addressed and incorporated in the revised Code before Section 78 of Public Act 07-242 can be implemented.

You have confirmed for me that the provisions of the Code do not ordinarily become effective until after the Code is adopted. Moreover, you have also confirmed that the provisions of the Code apply only to building permits issued after the effective date of the Code. This is

² It should be noted that these issues are only a representative sample of the many issues involved with implementing Section 78 of Public Act 07-242.

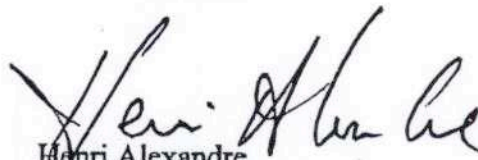
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done so that those who are affected by the Code know what is required of them. Based on the above representations and the fact that those affected by the Code will need definite guidance on how to comply with the requirements of Section 78 of Public Act 07-242, it is my opinion that those requirements cannot be implemented until the revised Code is adopted. I note, moreover, that some of the issues raised by the Codes and Standards Committee and the State Building Inspector can only be addressed through legislation.

The foregoing analysis is that of the undersigned. It is provided to you as guidance in carrying out your statutory duties. It should not be considered a formal opinion of the Office of the Attorney General.

Very truly yours,



Henri Alexandre
Assistant Attorney General