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MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

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September 1, 2009

The Honorable Kathleen D. Sheehy
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

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30 East Seventh Street
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St. Paul, MN 55101-4919

Re: In the Matter of the Administrative Order Issued to Wright County
OAH Docket No. 3-1902-20003-2

Dear Judge Sheehy, Mr. Kaisershot, Mr. Anderson, and Mr. Tiede:

Enclosed and served upon you by U.S. mail please find the Findings of Fact, Conclusions of Law and Order with respect to the above-referenced matter.

Sincerely,

Cynthia Valentine
Deputy Commissioner
Department of Labor and Industry
(651) 284-5010 (main)
(651) 284-5721 (fax)

Enclosures

cc: Charles Durenberger, Construction Codes and Licensing Division
Eileen McNiff, Construction Codes and Licensing Division

This information can be provided to you in alternative formats (Braille, large print or audio tape).

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STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
443 LAFAYETTE ROAD NORTH
ST. PAUL, MINNESOTA 55155

In the Matter of the Administrative Order
Issued to Wright County

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

OAH Docket No. 3-1902-20003-2

The above-entitled matter originally came on for Wright County's motion to dismiss or stay the proceeding and the parties' cross motions for summary disposition before Administrative Law Judge Kathleen D. Sheehy of the Office of Administrative Hearings. Corinna Township filed a Petition To Intervene, which was granted by the Administrative Law Judge on April 10, 2009. The motion record closed on April 21, 2009, upon receipt of Wright County's reply memorandum. Assistant Attorney General Christopher M. Kaisershot appeared on behalf of the Minnesota Department of Labor and Industry ("Department"), Scott T. Anderson, Esq., Ratwik, Roszak & Maloney, P.A. appeared on behalf of Wright County ("County"), and Peter B. Tiede, Esq., and Calley E. Swanson, Esq., Murnane Brandt, appeared on behalf of Corinna Township ("Township"). The Administrative Law Judge's Recommended Order on Motion to Dismiss and Cross Motions for Summary Disposition was issued on May 21, 2009. The Commissioner of Labor and Industry has delegated the authority to issue a final order in this matter to the Department of Labor and Industry's Deputy Commissioner, Cynthia Valentine. By letter dated May 27, 2009, the Department's Chief General Counsel, Nancy J. Leppink, informed the parties of their right to file comments with the Commissioner regarding the Administrative Law Judge's Recommended Order on Motion to Dismiss and Cross Motions for Summary Disposition. The Department of Labor and Industry and the Respondent filed comments by letter dated June 16, 2009. The record closed at 4:30 p.m. on June 16, 2009.

NOTICE

Any person aggrieved by the agency's Findings of Fact, Conclusions of Law and Order in this contested case is entitled to judicial review of the decision under Minn. Stat. §§ 14.63-14.68 (2009). An aggrieved person must file a petition for a writ of certiorari with the Minnesota Court of Appeals and serve it on the agency, all other parties to the proceeding and the attorney general, personally or by certified mail, not more than 30 days after the aggrieved party receives the final decision and order of the agency. Proof of service on the agency, the other parties and

the attorney general must be promptly filed with the Office of the Clerk of Appellate Courts and the appeal will thereafter proceed in the manner provided by the Rules of Civil Appellate Procedure.

FINDINGS OF FACT

1. Respondent adopted the Minnesota State Building Code ("MSBC") and employs Craig Schulz as its designated building official.

2. Corinna Township, located in Wright County, adopted the MSBC.

3. On August 11, 2008, the Township designated Loren Kohnen as the building official for the Township.

4. By August 14, 2009 letter, the Department recognized Corinna Township's designation of its building official.

5. In August 2008, the Commissioner was advised that Respondent was issuing building permits for construction work that was to be performed in Corinna Township, and was otherwise administering the MSBC in Corinna Township.

6. On August 18, 2008, the Department's Assistant Director of the Construction Codes and Licensing Division ("CCLD"), Scott McLellan, sent a letter to Wright County Attorney Thomas N. Kelley explaining the applicable Minnesota statutes regarding the administration of the MSBC, including the fact that Corinna Township has met the conditions required to administer the MSBC.

7. On August 29, 2008, the Commissioner sent a letter to Wright County Planning and Zoning Administrator Tom Salkowski clarifying that Corinna Township has properly adopted the MSBC, and that only the building official designated by Corinna Township may administer the MSBC in Corinna Township.

8. On September 22, 2008, CCLD staff was informed that, despite the letters sent by the Commissioner and McLellan, Respondent had continued to issue building permits and otherwise administer the MSBC in Corinna Township.

9. On September 23, 2008, CCLD Regional Services Supervisor Doug Nord spoke with Designated Building Official Schulz and instructed him to stop administering the MSBC in Corinna Township. In that conversation, Schulz told Nord that he intended to continue to administer the MSBC in the Shoreland District of Corinna Township.

10. Corinna Township's Petition to Intervene was granted by the Administrative Law

Judge on April 10, 2009.

11. Any Finding of Fact herein, which should more properly be deemed a Conclusion of Law, is hereby adopted as such.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 326B.082.

2. Minn. Stat. § 326B.082 empowers the Commissioner to take action against Respondent for its violation of Minnesota statutes and rules.

3. Respondent and the Department have complied with all relevant procedural legal requirements.

4. Respondent violated Minn. Stat. § 326B.133, subs. 1 and 4, by administering the MSBC, including issuing building permits, in a jurisdiction in which it is not designated to do so.

5. Any Conclusion of Law herein, which should more properly be deemed a Finding of Fact, is hereby adopted as such.

6. This Order is in the public interest.

Based upon the foregoing Conclusions, the Commissioner makes the following:

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The County's Motion to Dismiss is DENIED; and
2. The Department's motion for summary disposition is GRANTED, and the County's motion for summary disposition is DENIED.

IT IS FURTHER ORDERED that the October 14, 2008 Administrative Order issued to Respondent is AFFIRMED in its entirety.

Dated: Sept. 1, 2009

STEVE SVIGGUM
Commissioner

By: Cynthia Valentine
 CYNTHIA VALENTINE
 Deputy Commissioner
 Department of Labor and Industry
 443 Lafayette Road North
 St. Paul, Minnesota 55155
 Telephone: (651) 284-5010

MEMORANDUM

This matter comes before the Commissioner following a motion to dismiss or stay the proceeding and the parties' cross motions for summary disposition before Administrative Law Judge Kathleen D. Sheehy. On April 10, 2009, Corinna Township was granted party status by order of the Administrative Law Judge. Administrative Law Judge Sheehy issued her Recommended Order on Motion to Dismiss and Cross Motions for Summary Disposition on May 27, 2009. Assistant Attorney General Christopher M. Kaisershot submitted comments on behalf of the Department, dated June 16, 2009. Scott T. Anderson, Esq., Ratwik, Roszak & Maloney, P.A. submitted comment on behalf of Respondent, dated June 16, 2009. The record closed at 4:30 p.m. on June 16, 2009.

The Commissioner adopts and incorporates as his own the Memorandum of the Administrative Law Judge with the following modifications:

"The County contends that once a county has designated a building official, the Department's ~~designation~~ recognition of a building official in any town within the county is ineffective to change the authority of the county's building official."¹

"The Department has interpreted the statute to mean that a county administers and enforces the building code unless a building official has been designated ~~for~~ by a city or town therein. Once a city or township has a ~~certified~~ designated building official, that person handles building permits within the township, and the county loses its authority to administer the building code at that time."²

"The statutes are clear that the Department has the authority to ~~designate~~ recognize the Township's building official and that the designation and notice to the County removes the authority of the County building official to perform the

¹ Memorandum at page 7.

² Id.

