

Request of the Johnston association of fire fighters: Pursuant to RIGL 23-28.3-3 (d) and sections 6-4.1 and 6-4.2 of the State Fire Safety code, the Association is seeking a formal interpretation of the range of impact the RIGL sections 23-28.2-4,6,9 and 17 as these sections relate to inspection and code enforcement. Specifically, the association seeks a formal response to the following questions:

1. Is it the intent of the Fire Safety Code to limit enforcement of the Code to those persons who have been appointed as deputy or assistant deputy state fire marshals by the State Fire Marshal?
2. Is it the intent of the Fire Safety Code to allow or require firefighters or other persons who have not been appointed as deputy or assistant deputy state fire marshals to conduct fire safety inspections of buildings or to otherwise enforce or attempt to enforce the Fire Safety Code?
3. RIGL 23-28.2-17 grants relief from personal liability and provides legal assistance to the State Fire Marshal, his or her deputies, and assistants charged with the enforcement of the Fire Safety Code. If a firefighter or other person who has not been appointed as deputy or assistant deputy state fire marshal undertakes the enforcement of the Fire Safety Code either voluntarily or by direction of his/her supervisor, is he/she covered and protected under the provisions of RIGL 23-28.2-17?

Background: Pursuant to RIGL 23-28.2-4, the State Fire Marshal is empowered to conduct fire safety inspections, plan and other types of review, of all buildings regulated by the Fire Safety Code. RIGL 23-28.2-6 and 23-28.2-9 authorize the State Fire Marshal to procure and appoint as many deputy or assistant deputy state fire marshals as necessary to assist him in carrying out the various responsibilities of chapters 28.1 through 28.39 of title 23, including inspection and code enforcement.

In order to effectively enforce the State Fire Code, the State Fire Marshal has relied heavily on the non-salaried assistant deputy state fire marshals he has appointed from the various fire departments throughout the State. Prior to appointing and/or re-appointing these individuals, the State Fire Marshal required that they attend certification and/or re-certification classes and pass comprehensive examinations.

Pursuant to the advice of the State Attorney General's Office, the State Fire Marshal has purged his list of assistant deputy state fire marshals of those individuals who were once certified but have not maintained these certification. Specifically, those individuals who have either left the fire service and/or failed to attend and pass the State Fire Marshal's re-certification classes now automatically lose their status of assistant deputy state fire marshal. The State Fire Marshal has the authority to do this because "...the assistant deputy state fire marshals shall serve at the pleasure of the state fire marshal". RIGL 23-28.2-9 .

Determination of the Board: The above questions were presented to, and reviewed by, the Board on October 5, 1999. At that time, a motion was made by Commissioner Fang and seconded by Commissioner Farrell, to issue the following formal interpretation:

1. **It is the intent of the Fire Safety Code to limit the general enforcement of the Code only to those persons who have been appointed and certified as deputy or assistant deputy state fire marshals and who have further maintained that certification.** The only limited exception to the above rule is for smoke detector inspections of occupied residential properties constructed before June of 1976. (RIGL 23-28.35-4)
2. **It is not the intent of the code to allow or require fire fighters or other persons, who are not currently approved by the State Fire Marshal as a deputy or assistant deputy state fire marshals, to conduct general fire safety inspections or plan reviews of buildings or to otherwise enforce the Fire Safety Code.** Again, the only limited exception to the above rule is the specific legislative authority granted for smoke detector inspections under RIGL 23-28.35-4. It is certainly in the public interest to have all other types of fire safety inspections and/or plan reviews conducted only by those individuals recognized and certified by the State Fire Marshals as having and maintaining the most current fire prevention skills.
3. **A firefighter or other person, who has not been appointed as deputy or assistant deputy state fire marshal, or who fails to maintain this certification, becomes personally liable for any actions he or she takes in attempting to enforce the fire code. This liability would further extend to the fire district and/or the city or town directing this code enforcement by such an unqualified, or uncertified, individual.** There would also be a liability issue with whoever ordered the uncertified or unqualified individual to conduct an inspection and/or plan review under the State Fire Code. This situation is prevented when an inspection or plan review is conducted by a currently certified assistant deputy state fire marshal. By virtue of this individual's appointment he or she would sign the inspection or plan review report as an officer of the State Fire Marshal as opposed to being an officer of the city or town. Accordingly, the liability of the city or town would be substantially reduced or eliminated for any acts or omissions by the currently certified assistant deputy state fire marshal.