

**NC Department of Insurance
Office of the State Fire Marshal - Engineering Division
1202 Mail Service Center, Raleigh, NC 27699-1202
919-647-0001**

Guidance Paper: Wedding Venues and Farm Buildings

Code: 2018 NC Administrative Code and Policies
Section: GS 143-138(B4)

Date: 3/5/2019

Code: 2018 NC Building Code
Section: 101.2

Question:

Does a building constructed for use as a wedding venue or similar use on a farm outside the rules jurisdiction of a municipality qualify for the “farm building” building code exemption found in General Statute 143-138(B4) and Section 101.2 of the NC Building Code?

Answer:

Yes, everything but the electrical system. An advisory letter from Special Deputy Attorney General, Daniel S. Johnson to General Counsel for the Department of Insurance, John Hoomani Dated March 4, 2019 (see attached copy) indicates that such buildings are exempt from the NC Building Codes if the buildings are not occupied for sleeping purposes and is outside the building-rules jurisdiction of a municipality. Such buildings are then exempt because they are considered “agritourism” buildings. The letter, however, indicates that electrical systems of such buildings are not exempt and are thus required to comply with the NC Electrical Code.

Based on the advisory letter, the following guidance is offered:

- An existing farm building that is to be used for a function such as a wedding venue and adds plumbing or HVAC systems for that function, those systems are exempt from the requirements of the codes, but any associated electrical wiring is not exempt.
- New buildings constructed for functions such as wedding venues are exempt from the requirements of the codes, but any associated electrical wiring is not exempt.
- Electrical systems are never exempt from the requirements of the codes.

The guidance and opinions contained herein are not legal advice and may not necessarily reflect the most current statutory or code language.

Attachment:

JOSH STEIN
ATTORNEY GENERAL



REPLY TO: DANIEL S. JOHNSON
SPECIAL DEPUTY ATTORNEY GENERAL
INSURANCE SECTION
(919) 716-6620

March 4, 2019

A. John Hoomani
General Counsel
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

Re: Advisory Letter Regarding Extent of Exemption provided by N.C. Gen. Stat. § 143-138(b4) from the North Carolina Building Code for certain “farm buildings”

Dear Mr. Hoomani:

You have asked for an opinion on the extent of the applicability of the North Carolina Building Code to “farm buildings” as defined by N.C. Gen. Stat. § 143-138(b4). Specifically, you have asked for an opinion regarding the applicability of the Building Code, in light of the provisions of N.C. Gen. Stat. §§ 143-138(b4), 143-138(b5) and 153A-340(b)(2a), to “farm buildings” used for agritourism purposes.

Scope of the North Carolina Building Code

The North Carolina State Building Code, as adopted by the Building Code Council, may include ... rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning ... and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large. N.C. Gen. Stat. § 143-138(b).

The 2018 Building Code is made up of 10 separate volumes or binders. The volumes are Administration Code, Building Code, Electrical Code, Energy Code, Existing Building Code, Fire Prevention Code, Fuel Gas Code, Mechanical Code, Plumbing Code, and Residential Code. See: “North Carolina State Building Code Order Form and Price List” on N.C. Department of

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Insurance website found at: https://ncdoi.com/OSFM/Engineering_and_Codes/Documents/-State_Building_Codes/CodeForm2018.pdf

The North Carolina State Building Code adopted by the Building Code Council is a rule within the meaning of N.C. Gen. Stat. § 150B-2(8a) and must be adopted in accordance with the rule-making procedural requirements of Article 2A of Chapter 150B of the General Statutes. See N.C. Gen. Stat. § 143-138 (a).

State Agencies Responsible for Enforcement of the Building Code

The Insurance Commissioner has general authority, through the Division of Engineering of the Department of Insurance, to supervise, administer, and enforce all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) through (e) of N.C. Gen. Stat. § 143-139. In the exercise of the duty to supervise, administer, and enforce the North Carolina State Building Code ... the Commissioner, through the Division of Engineering, shall ... cooperate with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners. N.C. Gen. Stat. § 143-139 (b).

The Department of Labor has general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in Article 7 of Chapter 95 of the General Statutes. N.C. Gen. Stat. § 143-139 (c).

The Department of Labor has general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement devices such as merry-go-rounds, roller coasters and Ferris wheels. N.C. Gen. Stat. § 143-139 (d).

With respect to State buildings, the Department of Administration has general supervision, through the Office of State Construction, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) of N.C. Gen. Stat. § 143-139. See N.C. Gen. Stat. § 143-139 (e).

Local Government Enforcement of the Building Code

Cities

Every city in the State is authorized to create an inspection department, and may appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally

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descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. N.C. Gen. Stat. § 160A-411.

The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to the construction of buildings and other structures; the installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems; the maintenance of buildings and other structures in a safe, sanitary, and healthful condition; and other matters that may be specified by the city council. N.C. Gen. Stat. § 160A-412(a).

The duties and responsibilities set forth in N.C. Gen. Stat. § 160A-412 (a) include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections in a timely manner, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. N.C. Gen. Stat. § 160A-412(a1).

No city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not hold certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position. N.C. Gen. Stat. § 160A-411.1.

N.C. Gen. Stat. § 160A-417 provides that, except as otherwise provided in subsection (a2) of that statute, no person shall commence or proceed with the types of work listed in that statute without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. The types of work listed in this statute generally include construction or alteration of buildings or structures; installation or repair of plumbing systems; installation or repair of any heating or cooling system; and installation or repair of any electrical wiring, devices, appliances, or equipment. This statute contains a number of statutory exceptions to the permit requirement, including, but not limited to, the permit exception in subsection (a2). See N.C. Gen. Stat. § 160A-417.

Counties

A county may create an inspection department, consisting of one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, deputy or assistant inspector, or any other title that is generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. N.C. Gen. Stat. § 153A-351.

The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within the county's territorial jurisdiction State and local laws and local ordinances and regulations relating to the construction of buildings; the installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems; the maintenance of buildings in a safe, sanitary, and healthful condition;

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and other matters that may be specified by the board of commissioners. N.C. Gen. Stat. § 153A-352(a).

The duties and responsibilities set forth in N.C. Gen. Stat. § 153A-352(a) include receiving applications for permits and issuing or denying permits, making necessary inspections in a timely manner, issuing or denying certificates of compliance, issuing orders to correct violations, bringing judicial actions against actual or threatened violations, keeping adequate records, and taking any other actions that may be required to adequately enforce the laws and ordinances and regulations. N.C. Gen. Stat. § 153A-352(a1)

No county shall employ an inspector to enforce the State Building Code as a member of a county or joint inspection department who does not hold certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position. N.C. Gen. Stat. § 153A-351.1.

N.C. Gen. Stat. § 153A-357 provides that, except as otherwise provided in subsection (a2) of that statute, no person shall commence or proceed with the types of work listed in that statute without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local law or ordinance applicable to the work. The types of work listed in this statute generally include construction or alteration of any building; installation or repair of any plumbing system; installation or repair of any heating or cooling system; and installation or repair of any electrical wiring, devices, appliances, or equipment. This statute contains a number of statutory exceptions to the permit requirement, including, but not limited to, the permit exception in subsection (a2). See N.C. Gen. Stat. § 153A-357.

Legislative modifications to the Building Code and Permit Requirements

The General Assembly has enacted a number of statutory exclusions or exemptions from the North Carolina Building Code. For example, N.C. Gen. Stat. § 143-138(b9) provides an exemption or exclusion from the Building Code for industrial machinery. That statute provides: "Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery." For the purposes of that statute, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product or acquired by a State-supported center providing testing, research, and development services to manufacturing clients. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission. See N.C. Gen. Stat. § 143-138(b9).

In addition, the General Assembly has enacted a number of statutory exceptions to the requirement of obtaining a building permit. For example, under N.C. Gen. Stat. § 143-138(b16), no permit is required under the Building Code for the repair or replacement of dishwashers, disposals, water heaters, electrical devices, or lighting fixtures so long as the repair or replacement does not involve the relocation or replacement of electrical wiring; the work is performed by a licensed electrician or the employee of a licensed electrical contractor; and so

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long as the repair or replacement is performed in accordance with the current Building Code. N.C. Gen. Stat. § 143-138(b16) is clearly only an exception to the permit requirement and not an exemption from the building code since this permit exception statute expressly requires that the work done must comply with the Building Code. An additional example of work excepted from the requirement of a building permit is found in N.C. Gen. Stat. § 143-138(b5). Under that statute, with certain exceptions, no permit is required for any construction, installation, repair, replacement, or alteration *performed in accordance with the current Building Code* and costing fifteen thousand dollars (\$ 15,000) or less in any single family residence or farm building. The permit exception set out in N.C. Gen. Stat. § 143-138(b5) is refined and limited by several fact situations that can render that statutory permit exception inapplicable. If the work involves the addition, repair, or replacement of load bearing structures, this permit exception is not applicable. However, no permit is required for the replacement of windows, doors, siding and exterior decking and stairs that meet the requirements of the permit exception. If the work involves the addition or change in the design of plumbing, this permit exception is not applicable. However, no permit is required for plumbing replacements that meet the requirements of the permit exception that do not change size or capacity. If the work involves the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, appliances, or equipment, this permit exception is not applicable. If the work involves the use of materials not allowed by the North Carolina Residential Code for One- and Two-Family Dwellings, the permit exception is not applicable. If the work involves the addition of roofing, the permit exception is not applicable. However, no permit is required for roofing replacement. N.C. Gen. Stat. §143-138(b5) is clearly only an exception to the permit requirement and not an exemption from the Building Code since this permit exception statute expressly requires that the work be performed in accordance with the building code.

Statutory exceptions to the permit requirement are found not only in the provisions of N.C. Gen. Stat. § 143-138, but also in the provisions of permit statutes N.C. Gen. Stat. §160A-417 and N.C. Gen. Stat. §153A-357. For example, these permit statutes both include statutory exceptions to the permit requirement that closely resemble the permit exception set out in N.C. Gen. Stat. §143-138(b5). These permit exceptions require the work to be performed in accordance with the current Building Code. See N.C. Gen. Stat. § 160A-417(a2) and N.C. Gen. Stat. §153A-357(a2). The statutory permit exceptions set out in N.C. Gen. Stat. § 143-138, N.C. Gen. Stat. §160A-417 and N.C. Gen. Stat. §153A-357 do not always use exactly the same language, and N.C. Gen. Stat. § 143-138 contains permit exceptions that do not appear in those other two permit exception statutes. Under North Carolina law, however, all of these permit exceptions are to be given effect. This is because when there are two or more statutes on the same subject, in the absence of an express repealing clause, they are to be harmonized and every part allowed significance, if it can be done by fair and reasonable interpretation. *Empire Power Co. v. North Carolina Dep't of Environment, Health & Natural Resources*, 337 N.C. 569, 593, 447 S.E.2d 768, 782 (1994).

With this background, the extent of the building code exemption or exclusion set out in N.C. Gen. Stat. § 143-138(b4) for certain “farm buildings” will now be examined.

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Building Code Exemption for Certain Farm Buildings

N.C. Gen. Stat. §143-138(b4) provides, in part: Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses or therapeutic equine facilities ...¹

(1) For the purposes of this subdivision, a "farm building" means any *nonresidential building* or structure that is used for a *bona fide farm purpose* as provided in G.S. 153A-340. ... (emphasis added) See N.C. Gen. Stat. § 143-138(b4)(1).

The fact that the statutory definition of "farm building" requires that the farm building be *nonresidential* means that a farmhouse, bunk house, bed and breakfast, hotel or any other building that is used for residential purposes, *even if used for bona fide farm purposes* is fully subject to the Building Code in the absence of some other exemption or permit exception. See N.C. Gen. Stat. § 143-138(b4)(1).

It may be argued that N.C. Gen. Stat. § 143-138(b4) does not constitute an exemption or exclusion from the "Building Code" since it refers to the inapplicability of "building rules." Such an argument is not supported by an examination of N.C. Gen. Stat. §143-138. The Building Code is a set of "building rules" since the Building Code is a rule and must be adopted as such by the Building Code Council under N.C. Gen. Stat. § 143-138(a). Further, the word "rules" is used five times in N.C. Gen. Stat. § 143-138(b) which is entitled: "Contents of the Code." Thus, the words "building rules" means "Building Code." In addition, the provisions of N.C. Gen. Stat. § 143-138(b4) do not supply an alternative definition for the term "building rules."

Bona Fide Farm Purposes

Under the provisions of N.C. Gen. Stat. § 153A-340, which is incorporated by reference into N.C. Gen. Stat. §143-138(b4), bona fide farm purposes include "the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1." See N.C. Gen. Stat. § 153A-340(b)(2). It can also be seen that the statutory definition of "agriculture" is incorporated into the definition of bona fide farm purposes found in N.C. Gen. Stat. § 153A-340(b)(2). "Agriculture" is defined by N.C. Gen. Stat. § 106-581.1 as: the cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants; the planting and production of trees and timber; dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing; aquaculture; the operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair,

¹ This statute has additional language that deals with a "primitive camp" and a "primitive farm building," but no inquiry has been made about those types of structures and they are not discussed in this letter.

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replacement, expansion, and construction incident to the farming operation; when performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm; and a public or private grain warehouse or warehouse operation where grain is held 10 days or longer. See N.C. Gen. Stat. § 106-581.1.

N.C. Gen. Stat. § 153A-340(b)(2a) provides that a building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue or is enrolled in the present-use value program pursuant to N.C. Gen. Stat. § 105-277.3. For the purposes of N.C. Gen. Stat. § 153A-340(b)(2a), "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting. N.C. Gen. Stat. § 153A-340(b)(2a).

Specific Examples of Farm Buildings listed in N.C. Gen. Stat. § 143-138(b4)

N.C. Gen. Stat. § 143-138(b4) lists some specific types of structures that are expressly included in the definition of "farm buildings" that are exempt from the building code when located outside the building-rules jurisdiction of any municipality, or when located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses or therapeutic equine facilities.

Under N.C. Gen. Stat. § 143-138(b4)(1)a, a farm building shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in that subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules.

N.C. Gen. Stat. § 143-138(b4)(1)a allows for spectator seating structures in farm buildings. The farm building exemption requirement that the structures must be nonresidential is not violated by spectator seating areas. Spectators may occupy grandstands, but spectators do not reside in the grandstands. Note, however, that N.C. Gen. Stat. § 143-138(b4)(1)a requires an annual inspection of spectator seating structures in farm buildings. That statute provides: "[a] farm building that might otherwise qualify for exemption from building rules remains subject only to an annual safety inspection by the applicable city or county building inspection department of any grandstand, bleachers, or other spectator-seating structures in the farm

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building. An annual safety inspection shall include an evaluation of the overall safety of spectator-seating structures as well as ensuring the spectator-seating structure's compliance with any building codes related to the construction of spectator-seating structures in effect at the time of the construction of the spectator-seating." N.C. Gen. Stat. § 143-138(b4)(1)a. This quoted language in N.C. Gen. Stat. §143-138(b4)(1)a was added by 2011 N.C. Session Laws Chapter 364 entitled: "An Act to Expand the Exemption from Building Rules for Farm Buildings to Include Farm Buildings used for Spectator Events."

Under N.C. Gen. Stat. § 143-138(b4)(1)b, a farm building includes any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market. See N.C. Gen. Stat. § 143-138(b4)(1)b.

Under N.C. Gen. Stat. § 143-138(b4)(1)c, a farm building includes "any unoccupied structure built upon land owned by the State of North Carolina and administratively allocated to the North Carolina Department of Agriculture and Consumer Services or North Carolina State University which is used primarily for forestry production and research or agriculture production and research. The term "agriculture" has the same meaning as in G.S. 106-581.1. The term "unoccupied" does not exclude the keeping of livestock." See N.C. Gen. Stat. § 143-138(b4)(1)c.

Under N.C. Gen. Stat. § 143-138(b4)(1)a, a farm building does not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting. These are agritourism events as seen by the definition of agritourism found in N.C. Gen. Stat. § 153A-340(b)(2a). Of course, it is expected that wedding chapels or wedding reception facilities will be occupied from time to time. However, the farm building exemption requirement that the structures must be nonresidential is not violated by providing for audience or wedding guest seating. An audience may occupy a wedding chapel or reception facility, but an audience does not reside in the wedding chapel or reception facility.

Statute Applying the Building Code to the Electric Wiring of Farm Buildings

Despite the exemption or exclusion from "building rules" applicable to nonresidential farm buildings by reason of N.C. Gen. Stat. §143-138(b4), the electric wiring of such farm buildings is still required to meet the requirements of the Building Code. This conclusion is based on the provisions of N.C. Gen. Stat. § 143-143.2.

N.C. Gen. Stat. § 143-143.2 entitled: "Electric wiring of houses, buildings, and structures" provides:

The electric wiring of houses or buildings for lighting or for other purposes shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws. In order to protect the property of citizens from the dangers incident to defective electric wiring of

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buildings, it shall be unlawful for any firm or corporation to allow any electric current for use in any newly erected building to be turned on without first having had an inspection made of the wiring by the appropriate official electrical inspector or inspection department and having received from that inspector or department a certificate approving the wiring of such building. *It shall be unlawful for any person, firm, or corporation engaged in the business of selling electricity to furnish initially any electric current for use in any building, unless said building shall have first been inspected by the appropriate official electrical inspector or inspection department and a certificate given as above provided.* In the event that there is no legally appointed inspector or inspection department with jurisdiction over the property involved, the two preceding sentences shall have no force or effect. *As used in this section, "building" includes any structure.*

N.C. Gen. Stat. § 143-143.2 (Emphasis added)

The provisions of N.C. Gen. Stat. § 143-143.2 act as a limit, with respect to electric wiring, on the farm building exemption or exclusion from the building code provided by N.C. Gen. Stat. § 143-138(b4). N.C. Gen. Stat. § 143-143.2 requires that “the electric wiring of houses and buildings shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws.” See N.C. Gen. Stat. § 143-143.2. This statute also prohibits a supplier of electricity from initially furnishing electric current to a building or structure unless the building or structure has been inspected by the appropriate official electrical inspector or inspection department and a certificate has been supplied approving the wiring of such building or structure. See N.C. Gen. Stat. § 143-143.2. This statute is a safety statute as shown by its express reference to “the dangers incident to defective electric wiring of buildings.”

It may be argued that this electric wiring safety statute conflicts with the farm building exemption or exclusion from the Building Code set out in N.C. Gen. Stat. § 143-138(b4). However, there is no such conflict. The farm building exemption or exclusion does not claim to repeal N.C. Gen. Stat. § 143-143.2. The farm building exemption or exclusion in N.C. Gen. Stat. § 143-138(b4) provides that “building rules” do not apply to farm buildings as defined by that statute. However N.C. Gen. Stat. § 143-143.2 is not merely a building rule and is not a rule at all. Since this statute it is not a *building rule*, the farm building exemption or exclusion from building rules has no effect on this *safety statute* enacted by the General Assembly.

Summary of Extent of Building Code Exemption for Farm Buildings

Under N.C. Gen. Stat. § 143-138(b4) nonresidential structures located outside the building-rules jurisdiction of any municipality used for a bona fide farm purposes are considered “farm buildings.” N.C. Gen. Stat. § 143-138(b4) exempts such nonresidential farm buildings from the building code. In addition, under N.C. Gen. Stat. § 143-138(b4) farm buildings that are located inside the building-rules jurisdiction of any municipality are exempt from the Building Code if the farm buildings are greenhouses or therapeutic equine facilities. The Farm Building exemption from the Building Code carries with it an exception to Building Code permit requirements (except as to electrical wiring) for such structures. See N.C. Gen. Stat. § 160A-417

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and N.C. Gen. Stat. § 153A-357 which recognize that permits are necessary when “required by the State Building Code and any other State or local law or ordinance applicable to the work.” A residential building such as a farmhouse, bunk house, bed and breakfast, hotel or any other building used for residential purposes, even if used for bone fide farm purposes, remains fully subject to the Building Code in the absence of some other statutory exemption or permit exception. Nonresidential buildings used for agritourism are considered “farm buildings.” As noted above, agritourism means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. N.C. Gen. Stat. § 153A-340(b)(2a). For a building to be considered to be used for agritourism, the building or structure must be located on a property that is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue or is enrolled in the present-use value program pursuant to N.C. Gen. Stat. § 105-277.3. A farm building does not lose its status as a farm building because it is used for public or private events such as weddings, receptions, meetings, and other events that are taking place on the farm because of its farm or rural setting. Nonresidential structures used or associated with equine activities are considered “farm buildings.” A farm building does not lose its status as a farm building because it has spectator seating or grandstands, but an annual safety inspection of such spectator seating is required.

The farm building exemption or exclusion from the Building Code provided by N.C. Gen. Stat. § 143-138(b4) is limited by N.C. Gen. Stat. § 143-143.2 that requires the electric wiring of any building (including farm buildings) to conform to the Building Code. See N.C. Gen. Stat. § 143-143.2.

This advisory letter only addresses the extent of the applicability of the North Carolina Building Code to “farm buildings” as defined by N.C. Gen. Stat. § 143-138(b4). This letter does not address other governmental restrictions, such as public health statutes, that may be applicable to these farm buildings. See N.C. Gen. Stat. § 143-143 recognizing that Article 9 of Chapter 143 entitled “Building Code Council and Building Code” does not affect the power of any State department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law not in conflict with the provisions of that Article.

This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General’s opinion.

Sincerely,



Daniel S. Johnson
Special Deputy Attorney General

The guidance and opinions contained herein are not legal advice and may not necessarily reflect the most current statutory or code language.

Keywords:

Barns, stables, livestock, pens, coupes, party, parties, assembly, A-2, A-3

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