



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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1890010

January 23, 1989

George L. Schroeder
Director
Legislative Audit Council
State of South Carolina
620 NCNB Tower
Columbia, South Carolina 29201

COMMISSION AUTHORIZED

Dear Mr. Schroeder:

The staff of the Federal Trade Commission 1/ is pleased to respond to the invitation of the Legislative Audit Council of the State of South Carolina to comment on the possible restrictive or anticompetitive effects of the state's statutes or regulations governing the activities of nine state agencies: (i) the Board of Registration for Landscape Architecture; (ii) the Board of Architectural Examiners; (iii) the Board of Funeral Service; (iv) the Board of Examiners for Registered Sanitarians; (v) the Board of Social Work Registration; (vi) the State Cemetery Board; (vii) the Building Code Council; (viii) the Board for Barrier Free Design; and (ix) the Athletic Trainers Advisory Committee. 2/

The comments below identify provisions of the relevant statutes and regulations that may have anticompetitive effects

1/ These comments represent the views of the staff of the Federal Trade Commission's Bureau of Competition and do not necessarily represent the views of the Commission itself or any individual Commissioner.

2/ Commission staff provided comments to the Legislative Audit Council of South Carolina on four prior occasions. On February 19, 1987, Commission staff commented on the sunset audit of the Boards of Optometry and Opticianry. On April 23, 1987, Commission staff commented on the sunset audit of the Boards of Podiatry Examiners, Occupational Therapy Examiners, Speech and Audiology Examiners and Psychology Examiners. On September 29, 1987, Commission staff commented on statutes administered by the South Carolina Public Service Commission. Finally, on January 15, 1988, Commission staff commented on the regulations governing the state's Licensing Board for Contractors, Residential Home Building Commission, Real Estate Commission, Board of Certification for Environmental System Operators, Board of Registration for Professional Engineers and Land Surveyors, and Manufactured Housing Board.

and thereby injure consumers. In Part I of these comments, we identify the interest and experience of the Commission's staff in the area of occupational regulation. In Part II, we discuss the considerable published research on the effects of occupational licensing. In Part III, we examine specific provisions of the statutes and regulations that may have anticompetitive effects. We do not have any comments with respect to the statutes and regulations governing the state's Cemetery Board, the Board for Barrier Free Design, and the Athletic Trainers Advisory Committee.

I. Interest and Experience of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive practices in or affecting commerce. 15 U.S.C. § 45. Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. The Commission has sought to improve consumer access to professional services by initiating antitrust enforcement proceedings ^{3/} and conducting studies concerning various facets of the regulation of licensed professions. ^{4/} In addition, the Commission's staff has submitted comments to state legislatures and administrative

^{3/} See, e.g., Massachusetts Board of Registration in Optometry, [FTC Complaints and Orders transfer binder] 5 Trade Reg. Rep. (CCH) ¶ 22,555 (June 21, 1988); Rhode Island Board of Accountancy, 107 F.T.C. 293 (1986)(consent order); Louisiana State Board of Dentistry, 106 F.T.C. 65 (1985) (consent order); American Medical Ass'n, 94 F.T.C. 701 (1979), aff'd, 638 F.2d 443 (2d Cir. 1980), aff'd mem. by an equally divided court, 455 U.S. 676 (1982); American Dental Ass'n, 94 F.T.C. 403 (1979), modified, 100 F.T.C. 448 (1982), 101 F.T.C. 34 (1983) (consent order).

^{4/} See, e.g., Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983); Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

agencies on various issues of professional licensing and regulation. 5/

II. The Costs and Benefits of Occupational Licensing

The rationale for occupational licensing traditionally has been to guarantee a minimum quality standard in order to (a) reduce uncertainty about quality that consumers face when purchasing professional services, and (b) prevent those costs of low-quality service that might be imposed on society.

Proponents generally justify occupational licensing on the ground that regulation is necessary to correct an informational asymmetry between service providers and consumers. Because licensed occupations often provide services that require highly specialized, technical expertise, it is thought that consumers may lack the information and resources to evaluate the quality of services. For example, an unsuccessful litigant may be unable to determine whether he failed to prevail because his case lacked merit or because his lawyer was incompetent. A patient whose treatment fails to cure an illness similarly may be unable to determine whether the treatment failed because of the limitations of medical science or the failings of her doctor. If consumers cannot evaluate quality, producers may provide lower quality services than consumers desire. 6/ Licensing thus may be necessary to raise service quality above the level that would prevail in an unregulated market.

In many instances, however, this argument in support of mandatory licensing is not entirely convincing. Although consumers may have less information on quality than producers, they often receive adequate information from a variety of sources. 7/ Consumers can assess quality on the basis of their own purchase experience and the experience of friends, relatives, or neighbors, information provided by sellers or by various consumer-oriented publications, and inferences drawn from the

5/ In the past two years, Commission staff have commented on rules of professional conduct or regulations governing attorneys, chiropractors, dentists, optometrists, pharmacists, physical therapists, physicians, and real estate brokers.

6/ See Leland, Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards, 87 J. Pol. Econ. 1328 (1979); Leland, Minimum-Quality Standards and Licensing in Markets with Asymmetric Information, in S. Rottenberg, Occupational Licensure and Regulation 264 (1980).

7/ S. Young, The Rule of Experts: Occupational Licensing in America 17 (1988).

length of the seller's experience in business. 8/ Voluntary certification also conveys to consumers information on service quality. 9/ Consequently, in many cases the markets for professional services may generate sufficient information to enable consumers to make informed judgments about service quality without the imposition of licensing.

The second common argument in favor of licensing is that purchasers of low quality professional services may impose significant costs on third parties. For example, a person suffering from a contagious disease who is treated by an incompetent physician may pass on the disease to other persons who did not deal with the incompetent physician. While this argument has theoretical appeal in some cases, its actual relevance to any particular profession must be examined closely.

A fundamental objection to licensing and related governmental restrictions on professional practice is that they often fail to achieve their stated purpose of raising quality. Empirical research, including studies by the Commission's staff, indicates that licensing may not increase the quality of services offered to consumers. For example, a study of the relationship between licensing and fraud in the television repair industry found that licensing failed to reduce the incidence of fraud compared to an unregulated market. 10/ Another study examined

8/ Id. at 17-18. Many products that consumers commonly purchase, such as microwave ovens, personal computers, or automobiles, are technologically complex. Although very few consumers understand the mechanisms that make these products operate, they nevertheless are able to make judgments concerning product quality, principally through the sources described above.

9/ Under a certification program, only persons who meet certification requirements may identify themselves as being certified, but noncertified persons are not barred from practicing the occupation. In contrast, under a licensing system, only individuals who obtain a license from the state may lawfully engage in the practice of the licensed occupation. Even if the market did not furnish sufficient information on service quality to consumers, a state-supported certification program may provide them that information without imposing on them the types of costs associated with licensing. See M. Friedman, Capitalism and Freedom 144-49 (1962).

10/ J. Phelan, Regulation of the Television Repair Industry in Louisiana and California: A Case Study (Federal Trade Commission 1974). The study also found that the cost of repairs was higher in New Orleans, which imposed a licensing requirement, than in

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licensing rules that restricted the use of dental auxiliaries (hygienists and assistants) to perform certain dental procedures. The study found that the quality of service provided by the auxiliaries in performing those procedures was equal to that provided by the licensed dentists. ^{11/} Another recent FTC staff study found that the quality of eye examinations by optometrists was similar in the different jurisdictions studied, even though the stringency of their licensing regulations differed. ^{12/}

Even when occupational licensing does increase the quality of services offered by licensed practitioners, it does so at a cost. By restricting the supply of practitioners and raising the cost of entry into licensed occupations, licensing tends to increase the price of services to consumers. ^{13/} In addition, by raising the cost and limiting the availability of services, licensing tends to induce some consumers to do without the services or to rely on self-help. Consumers' tendency to use self-help measures when the cost of services is raised or the supply is limited, in turn, may result in a reduction of the overall quality of services actually consumed even when that portion of the services delivered by the licensed occupation increases in quality. Thus, studies have shown that restrictive licensing of electricians was associated with a higher rate of death by electric shock, apparently because more consumers

^{10/}(...continued)

San Francisco and Washington, D.C., which did not. In addition, the study found that the incidence of fraud was 60 percent lower in San Francisco, where repair personnel were not licensed but where a state agency performed unannounced investigations of repair facilities, than in New Orleans, where repair personnel were licensed.

^{11/} N. Liang and J. Ogur, Restrictions on Dental Auxiliaries (Federal Trade Commission 1987). Auxiliaries include hygienists, who are licensed in all 50 states, and dental assistants, who are generally unlicensed. For the procedures studied, licensing requirements in many states restricted the use of auxiliaries. The restrictions included outright prohibitions on the use of auxiliaries to perform certain procedures, requirements that auxiliaries be supervised by licensed dentists, and restrictions on the number of auxiliaries that dentists could employ.

^{12/} The Case of Optometry, *supra* note 4; Bond, Kwoka, Phelan & Taylor, Self Regulation in Optometry: The Impact on Price and Quality, 7 *Law & Human Behav.* 219 (1983).

^{13/} See, e.g., The Case of Optometry, *supra* note 4; Shepard, Licensing Restrictions and the Cost of Dental Care, 21 *J.L. & Econ.* 187 (1978); Phelan, *supra* note 10.

resorted to self-help, ^{14/} and that houses tended to remain unsold for longer periods in areas with restrictive licensing of real estate brokers. ^{15/} The overall result in many cases is that "the lower middle classes and the poor . . . tend to be short-changed and offered low quality or no service at all." ^{16/}

One alternative to licensing that regulatory authorities may consider is voluntary certification. Under a certification program, only persons who meet specified requirements, such as educational, testing, or experience requirements, may hold themselves out as certified members of the profession, but persons who do not meet these requirements are nevertheless permitted to practice their trade. ^{17/} The advantage of this sort of system is that it conveys to consumers the kinds of information that a licensing regime is intended to provide but does not impose quality preferences on consumers. Consequently, consumers who prefer to purchase lower priced, lower quality services may continue to do so.

III. Analysis of Statutes and Regulations

A. Board of Registration for Landscape Architecture

The regulatory scheme for landscape architects resembles in many respects a voluntary certification program. Some aspects of landscape architecture may be practiced without a license. South Carolina law permits landscape contractors, gardeners, and nursery owners to engage in the practice of their professions without regulatory constraints. ^{18/} In addition, architects who

^{14/} See Carroll & Gaston, Occupational Restrictions and the Quality of Service Received: Some Evidence, 47 South. Econ. J. 959 (1981); Carroll & Gaston, Occupational Licensing: Final Report (1977). See generally Carroll & Gaston, Occupational Licensing and the Quality of Service: An Overview, 7 Law & Hum. Behav. 139 (1983); "[I]n the seven most restrictive states, up to ten times more accidental electrocutions occurred." Hogan, The Effectiveness of Licensing: History, Evidence, and Recommendations, 7 Law & Hum. Behav. 117, 123 (1983).

^{15/} See Occupational Licensing: Final Report, supra note 14. The increased duration of availability for sale is correlated with a lower ratio of brokers per capita. See Occupational Restrictions, supra note 14, 47 South. Econ. J. at 970-73.

^{16/} Quality of Service, supra note 14, at 145.

^{17/} See note 9, supra.

^{18/} S.C. Code Ann. § 40-28-150(g), (h).

are not licensed as landscape architects, engineers, and surveyors are permitted to perform "landscape architectural work . . . when such work is incidental to their practice." 19/ The statute appears to require consumers to retain the services of licensed landscape architects only under very limited circumstances. 20/ For that reason, a license as a landscape architect, which entitles its bearer to use the title "landscape architect," is similar in nature to a certification scheme in that it does not bar unlicensed persons from performing many of the functions of a landscape architect.

Two restrictions in the statutes and regulations governing landscape architects, however, may have potential anticompetitive effects. First, the statute bars corporations and partnerships from using "any form of the title 'Landscape Architect' in connection with the corporate or partnership name." 21/ The use of the title landscape architect in the title of a firm whose members are so licensed could convey useful information to consumers and reduce their search costs in identifying and procuring the services of landscape architects. The harm that could be caused by the use of the title in firm names is not readily apparent. For that reason, the Council may wish to consider whether to retain this prohibition.

The second restriction that the Council may wish to consider is set forth in the regulations of the Landscape Architects Board of Registration. Under those regulations, a landscape architect is subject to disciplinary action for obtaining, offering to undertake, or accepting a commission for which the architect knows another firm has been selected or employed, unless the architect has evidence that the commission has been terminated. 22/ Restrictions on the ability of producers of goods or services to accept an offer from a potential client who has procured the services of another producer may, depending upon

19/ S.C. Code Ann. § 40-28-150(b)-(d).

20/ The use of a landscape architect would appear to be required for the design of landscaping projects that are not incidental to the practice of other design professionals and that encompass structural features other than plantings. The licensing requirement would thus appear to be limited to major landscaping projects. It may be argued that the selection of an incompetent architect to work on such projects could cause harm to third parties, such as through drainage into adjacent properties.

21/ S.C. Code Ann. § 40-28-160(b).

22/ Regulations of Landscape Architects Board of Registration, § 74-8(A)(5), (B).

the circumstances, lead to higher prices by restraining competition among producers. We do not have sufficient information on the market for landscape architectural services in South Carolina or the rationale for the adoption of this rule to assess the rule's probable effects. We note, however, that if the purpose of the rule is to prevent interference with contractual relationships, it may be overbroad insofar as it prohibits the solicitation of business from a client who has "selected" a landscape architect but has not entered into a contract for the architect's employment. The Council may wish to consider the specific reasons for the promulgation of this rule and weigh the benefits, if any, of the rule against its potential costs.

B. Board of Architectural Examiners

The licensing scheme for architects in South Carolina also bears strong resemblance to a certification program. Designers or planners of buildings must be licensed as architects only when designing major structures. ^{23/} Except with respect to the construction of major structures, the licensing of an architect serves as a seal of approval of the competence of the license holder rather than as a barrier to entry into the field of building design. ^{24/}

Two restrictions in the statutes and regulations governing the licensing of architects may reduce consumer welfare. First, the regulations of the Board of Architectural Examiners subject

^{23/} Under S.C. Code § 40-160(3), persons not licensed as architects may make drawings and specifications for certain types of structures if they sign them with "the true title of their occupations" The exempted structures include: (a) buildings used solely for family purposes; (b) buildings with an area of less than 6,000 square feet, unless such buildings are to be used for educational, institutional, or hazardous purposes; (c) family residences of up to four units, with each having a grade level exit; (d) free standing places of assembly with a capacity of no more than 75 persons; (e) mercantile and industrial buildings with a capacity of no more than 100 persons; and (f) alterations to exempted structures.

^{24/} With respect to the structures for which the use of a licensed architect is required, the use of an incompetent architect could have an effect on a large number of third parties. For example, the collapse of a large public structure will likely injure many individuals who never dealt with its designer. It is therefore arguable that a licensing requirement is justified if licensing in fact does guarantee the desired level of competence.

architects to disciplinary action for "dishonest practice, unprofessional conduct or incompetent practice" if they accept compensation from materials or equipment suppliers in return for specifying or endorsing their products. 25/ This restriction may have an inefficient effect in that the provision of compensation by suppliers may create an incentive for architects to familiarize themselves with new products in the market and specify them in building plans. 26/ Such specification, in turn, reduces search costs for consumers who purchase architectural services. For that reason, a prohibition of the practice may not serve the interests of consumers. Insofar as the state has determined that the payment of compensation by materials or equipment suppliers has unduly influenced the judgment of architects in the state, it may wish to consider requiring architects who receive such payments to disclose them to their clients.

Second, the regulations prohibit architects from making gifts with the intent of influencing the judgment of existing or prospective clients. 27/ Although the regulation may be intended to prohibit bribery, its effect may be much wider. The provision of gifts from the architect to the client (as opposed to agents or employees of the client) may be a form of price competition among architects. The regulation, as currently drafted, thus may prohibit both desirable competition among architects and payments used to taint the judgment of employees of potential clients. The Council may wish to consider ways of limiting this regulation to prohibiting undue influence of employees or agents of potential clients but permitting architects to give gifts or other inducements to the clients themselves.

C. Board of Funeral Service

Under South Carolina law, no person may be issued a license as an embalmer or a funeral director unless that person has completed a minimum of 24 months of service as an apprentice under the direct supervision of a person so licensed and actively practicing within the state. 28/ In addition, the statute limits

25/ Regulations of Board of Architectural Examiners, § 11-15, 11-15(A)(3).

26/ We noted with respect to an identical restriction in the regulations of the South Carolina Board of Engineering Examiners that "[w]hile this regulation would prevent clearly fraudulent 'kickbacks' that would harm consumers, it might also inhibit potentially beneficial outcomes." FTC Staff Comments to George L. Schroeder, January 15, 1988, at 11.

27/ Regulations of Board of Architectural Examiners, § 11-15(D)(2).

28/ S.C. Code Ann. § 40-19-100(1)(A)(v), (1)(B)(iv).

the number of apprentices that may be employed by each license holder. 29/ We presume that the state intends by this requirement to facilitate a minimum level of competence for embalmers or funeral directors. This type of requirement, however, could also be used by incumbent embalmers or funeral directors to restrict entry into those professions in the state and thereby increase the price for their services. An apprenticeship requirement, by its nature, is more susceptible to misuse by incumbents who seek to reduce entry into a profession than are reasonable testing or educational requirements that are adopted and administered by the state itself. The Council may wish to consider whether the objectives of the apprenticeship requirement may be attained through a means that is less susceptible to restricting competition, such as allowing applicants to satisfy testing or education requirements as an alternative. 30/ If the Council decides that the apprenticeship requirement should be retained, it may wish to reconsider the requirement that the apprenticeship be completed in South Carolina. By opening entry into the professions to persons who receive their experience elsewhere, the state would diminish the ability of incumbent embalmers and funeral directors to block entry into their professions and thereby to raise prices.

In addition, regulations of the state's Board of Funeral Services provide that persons licensed as embalmers or funeral directors in other states are not entitled to obtain South Carolina licenses on the basis of reciprocal agreements with other states. 31/ This restriction appears to insulate further South Carolina embalmers and funeral directors from competition. Restrictions on the mobility of professionals have been found to

29/ S.C. Code Ann. § 40-19-120.

30/ We note, for example, that South Carolina establishes a shorter apprenticeship requirement for architects who meet certain educational requirements than for those who do not. S.C. Code § 40-3-60(2). While we believe that the adoption of state-imposed educational or testing standards is preferable to the imposition of an apprenticeship requirement, we are not qualified to assess and do not assess the reasonableness of the apprenticeship requirement for architects or the reasonableness of any similar requirement for other professions discussed in this letter.

31/ Regulations of Board of Funeral Services, § 57-11. It is not clear whether this provision is intended to restrict the application of S.C. Code Ann. § 40-19-100(2), which provides for the admission to practice of embalmers and funeral directors licensed by states with "substantially similar requirements" to South Carolina's licensing rules.

lead to higher prices to consumers and higher incomes for the restricted professional groups. 32/

You should be aware that the FTC's Funeral Industry Practices Rule 33/ imposes certain disclosure requirements on funeral providers in addition to those set forth in South Carolina law. South Carolina law requires funeral providers to state a package price for the casket and other merchandise and services included in a funeral. 34/ This kind of pricing is permissible under the Commission's rule only if it is offered in addition to, and not in lieu of, itemized price information. 35/ In addition, compliance with South Carolina's requirement that the price be posted in the form of "a card or brochure in each casket" 36/ would be insufficient to satisfy the requirement of the Commission's rule that funeral providers furnish to consumers a written casket price list, itemizing 17 specific funeral goods and services, in a form that may be retained by the consumers. 37/

Finally, South Carolina law appears to prohibit persons other than funeral directors from selling funeral merchandise. 38/ For example, it would appear that cemetery operators are prohibited from selling caskets. The FTC's funeral rule, in contrast, seeks to encourage competition in the sale of funeral goods and services by prohibiting funeral providers from conditioning the furnishing of any funeral good or service on the purchase of any other funeral goods or services, except as required by law, and thus allowing persons other than funeral providers to sell funeral goods or services. 39/ A limitation on

32/ See, e.g., Boulter, Influence of Licensure on Dentists in S. Rottenberg, Occupational Licensure and Regulation 73 (1980); Pashigian, Occupational Licensing and the Interstate Mobility of Professionals, 22 J.L. & Econ. 1 (1979).

33/ 16 C.F.R. Part 453.

34/ S.C. Code Ann. § 40-19-200. South Carolina law requires funeral providers to state the items of individual funeral goods and services only when those items are not offered in a single package.

35/ 16 C.F.R. § 453.2(b)(2) - (6).

36/ S.C. Code Ann. § 40-19-200.

37/ 16 C.F.R. § 453.2(b)(4).

38/ S.C. Code. §§ 40-19-10(2), (3), (7), 40-19-110, 40-19-130.

39/ 16 C.F.R. § 453.4(b).

the professions that may sell funeral merchandise, by limiting the number of potential sellers, may lead to higher prices to consumers. You may wish to consider whether this requirement serves the interests of South Carolina consumers.

D. Board of Registration for Sanitarians

South Carolina law prohibits registered sanitarians from using solicitors to obtain patronage. ^{40/} Competition among members of an occupation in the solicitation of business lowers the search costs for consumers who may be interested in procuring the services offered by that occupation. Solicitation is a form of advertising, and restricting it may lead to higher prices. The Commission's staff has studied the effects of restrictions on advertising in the legal profession and found that such restrictions were associated with higher prices to consumers. ^{41/} You may wish to reevaluate the solicitation restriction in light of the cost it could impose on consumers.

E. Board of Social Work Registration

South Carolina law prohibits social workers from using solicitors to obtain patronage. ^{42/} For the reasons stated with respect to sanitarians, you may wish to reevaluate the costs and benefits of this restriction.

F. Building Code Council

South Carolina law prohibits local jurisdictions from drafting their own building codes and instead requires them to adopt one of a number of specified model codes. ^{43/} There is some evidence suggesting that the use of locally-drafted codes, which often favor the interests of local suppliers or trade organizations, may retard the adoption of innovative cost-saving construction methods and may thereby increase the cost of housing. ^{44/} For this reason, the present statutory requirement

^{40/} S.C. Code Ann. § 40-61-90(14).

^{41/} Improving Consumer Access to Legal Services, *supra* note 4.

^{42/} S.C. Code § 40-63-110(14).

^{43/} S.C. Code Ann. §§ 6-9-10, 6-9-60. Local jurisdictions may receive permission to modify model codes to local needs upon a showing that the authorized codes do not meet their needs "due to local physical or climatological conditions" S.C. Code Ann. § 6-9-60.

^{44/} See, e.g., Keating, Standards: Implicit, Explicit and Mandatory, 19 *Econ. Inquiry* 449 (1981); Field & Ventre, Local
(continued...)


that local jurisdictions use only model building codes may serve the interests of consumers. 45/

Conclusion

We are pleased to have this opportunity to present our views on occupational licensing statutes and regulations adopted by the State of South Carolina. We suggest that the Council may wish to reevaluate the costs and benefits of South Carolina's occupational licensing programs. In particular, you may wish to examine whether the two basic justifications for licensing -- the need to cure a potential informational asymmetry and the need to protect third parties from harm resulting from incompetent professional services -- are applicable to each of the regulatory programs that we have analyzed.

We have also undertaken a review of the specific provisions of the statutes and regulations that you have submitted. Our analysis suggests that certain provisions in those statutes and regulations could have anticompetitive effects. 46/ The Council may wish to consider alternatives to these provisions.

Sincerely,



Jeffrey I. Zuckerman
Director

44/(...continued)

Regulation of Building: Agencies, Codes and Politics in The Municipal Yearbook (1971).

45/ In a recent national survey of 162 cities, staff of the Commission's Bureau of Economics found that only two of the surveyed cities continued to use locally drafted codes. See R. Duke, Local Building Codes and the Use of Cost-Saving Methods (Federal Trade Commission 1989). The use of model codes appears to be part of a national trend even without the compulsion of state law. It is possible, however, that repeal of the statutory requirement that model codes be used could result in the increased use by local jurisdictions of potentially anticompetitive local building codes.

46/ The staff has reviewed the statutes and regulations governing nine regulatory agencies. In view of the volume of the materials involved, it is possible that some potentially anticompetitive provisions have escaped our attention. If the Council has questions concerning provisions not discussed in this letter, we encourage you to contact us for further review.