

AFFIDAVIT OF CERTIFICATION

Samantha Ewens, being first duly sworn, and deposes and says:

1. I am the Staff Director for the North Carolina Code Officials Qualification Board (hereinafter "the Board").
2. As part of my responsibilities as the Staff Director, I maintain and am a custodian of the Board's records of administrative actions against certificate holders.
3. Attached to this affidavit as Exhibit A is a copy of the Complaint Investigation Report for the complaint filed by Monroe A. Miller against Bruce Crawford and Johnny Glance of the Haywood County Inspection Department, dated January 12, 2012, as the report exists on this date.
4. This record is kept in the regular course of business of the Board.
5. The copy of the record that is attached as Exhibit A is a true and correct copy of the original record kept by the Board as of this date.

This 5th day of March, 2012.

Samantha Ewens

Samantha Ewens
North Carolina Code Officials
Qualifications Board
1202 Mail Service Center
Raleigh, N.C. 27699-1202

Sworn and subscribed before me
this 5th day of March, 2012.

Notary Public
My commission expires: 11-30-2013

Sarah M. Van Doornewaard

Printed Name
Sarah M. Van Doornewaard



COMPLAINT INVESTIGATION REPORT

Complainant: Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

Respondent: Bruce Crawford and Johnny Glance
Haywood County Inspection Department

North Carolina Code Officials Qualification Board
322 Chapanoke Road, Suite 200
Raleigh, North Carolina 27603

January 12, 2012

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**Complaint Investigation Report
Monroe Miller Jr. vs. Bruce Crawford and Johnny Glance**

Introduction

Pursuant to N.C.G.S. §143-151.17(b) the North Carolina Code Officials Qualification Board (hereafter, “the Board”) may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of N.C.G.S. §143-151.17 (a)."

The Board received a verified written complaint on February 22, 2011 from Monroe Miller Jr. concerning inspections conducted at the Haywood County Fairgrounds Arena Building. Mr. Miller is a resident of Haywood County. In the complaint Mr. Miller alleges that Mr. Bruce Crawford and Mr. Johnny Glance violated NC General Statute 143-151.17(a) (6) in that they have:

“(6) been guilty of willful misconduct, gross negligence, or gross incompetence.”

Engineering Division Investigation and Report

The Engineering Division of the NC Department of Insurance provides technical and administrative staff to the Board. This report is the result of the investigation of Mr. Miller’s complaint by the Boards staff. The purpose of the Engineering Division investigation is to verify whether the allegations listed in the complaint are actual violations of the General Statutes or of the NC State Building Code and that the allegations are attributed to the Code Enforcement Official named in the complaint and whether the type and number of violations are sufficient to justify a hearing to determine if the Code Enforcement Official is guilty of one or more of the actions set out in N.C.G.S. §143-151.17 (a).

This report was prepared by Shane Phelps. Phelps is a graduate of UNC-Charlotte with a BS in Civil Engineering. Phelps has a Level III Standard Building Inspection Certificate issued by the NC Code Officials Qualification Board.

A site investigation was made by Phelps accompanied by Richard Strickland on February 7, 2011. Strickland is the Chief Fire Code Consultant for the Code Interpretation Section at the NC Department of Insurance. Strickland is a graduate of Wilson Technical Community College with a degree in Fire Protection Technology. Strickland holds a Standard Level III Fire Inspector Certificate.

Inspectors

Johnny Bruce Crawford has been an inspector for the Haywood County inspection department from December 1989 until present. At the time of the inspections on the Haywood County Fairgrounds Arena Building, Crawford held Inspection Certificates for Level III Building, Level III Mechanical and Level III Plumbing. Crawford was appropriately certified to perform inspections on this building.

Johnny Harrell Glance has been an inspector for the Haywood County Fire Marshal’s Office from May 2001 until present. At the time of the inspections on the Haywood County Fairgrounds Arena Building, Glance held Inspection Certificates for Level I Fire. Glance was not appropriately certified to perform inspections on this building at the time of construction. Glance received his Level II Fire Certificate September 9, 2008 and was certified to perform the annual inspections at that time.

Nolan Kim Palmer was the Haywood County Fire Marshal from July 1973 to July 1988 part-time and full-time from July 1988 until retiring in 2009. At the time of construction, Palmer held a Limited Fire Certificate. Palmer was appropriately certified to perform inspections on this building.

Effective Code

Buildings are constructed according to the requirements of the Codes in effect at the time the building permit was issued. The building permit for the construction of the arena was issued in April 2004. The Codes in effect at the time of the issuance of the permit were the 2002 Edition of the North Carolina Building, Mechanical, Plumbing, Fire Prevention Codes, the 2005 National Electrical Code, and the 1999 North Carolina Accessibility Code. Code items cited in this report are from these Codes.

Description of Building

The building is a covered arena structure of Type II construction that is open on all sides with an area of roughly 68,500 square feet. It is a sprinklered A5 assembly occupancy with fixed bleacher seats. Restroom facilities were indicated on initial buildings plans but were not constructed.

Complaint Items

The complaint items are taken from Miller's letter of complaint dated February 22, 2011, Miller's original letter dated February 3, 2011, and observations during the site visit on February 7, 2011.

Item 1 – No Fire Sprinkler Test Results

"I had requested Fire Sprinkler Test Results from Johnny Glance for the Haywood County Fairgrounds Arena Building. He was unable to locate any test results, and was unable to produce any results for me, when I requested this public information. I charge Johnny Glance with gross negligence for not having this information available for me." (Miller's complaint letter dated February 22, 2011)

Glance's Response:

"Maintenance and tests are to be performed by the property owner and records kept by the property owner per the fire code section 107 under maintenance. Specifically 107.2 and 107.2.1 and 107.3"

Staff Finding:

The NC Fire Prevention Code Section 107.2.1 states:

"Required test and inspection records shall be available to the code official at all times or such records as the code official designates shall be filed with the code official."

In addition, the NC Fire Prevention Code Section 901.6.2 states:

"Records of all system inspections, tests, and maintenance required by the referenced standards shall be maintained on the premises for a minimum of 1 year and made available to the code official upon request."

The Fire Code requires the owner/occupant of the building to have the Fire Sprinkler Test Results to be available to the inspector if they request to see it. The fire marshal is not expected to have this information in their file. No violation has been verified.

Item 2 – Inadequate Fire Inspections

"I had requested Fire Sprinkler Test Results from Johnny Glance for the Haywood County Fairgrounds Arena Building. He was unable to locate any test results, and was unable to produce any results for me, when I requested this public information. I charge Johnny Glance with gross negligence for not having this information available for me." (Miller's complaint letter dated February 22, 2011)

Staff Finding:

Upon receiving Mr. Miller's complaint, Richard Strickland e-mailed Mr. Glance and requested in part:

“Will you please fax me copies of the last three annual inspections of all agriculture center buildings including any NFPA 25 inspections on the sprinkler system(s).”

The only record provided was an original sprinkler certification from April 2006. No annual inspections had been performed as required by the NC Fire Prevention Code Section 106. NC Fire Prevention Code Section 106 states in part:

“In no case shall inspections be conducted less frequently than described in the schedule below: Once every year.... Hazardous, institutional, high-rise, assembly...”

Part of the annual inspection for this facility would be to verify the sprinkler system had been tested properly. The sprinkler system was not working on our visit. It is not clear how long the system has been down, based on the complaint as well as the Board Meeting Minutes from February 17 2009 for the Haywood County Agriculture and Activities Center Association, the system had been out of commission. In our conversations during our visit, it was indicated that the system had not worked for some time.

On our visit, Strickland and I requested to see other fire inspection records for various occupancies. We reviewed the files and found that some inspections were being performed but Mr. Glance was behind and not in compliance with the requirement of the NC Fire Prevention Code Section 106. The inspections that were being performed were those that were required annually for licensure such as daycares and nursing homes. When asked about this Mr. Glance indicated that in addition to being understaffed, he was also the Emergency Management Director for Haywood County. Mr. Glance indicated that the inspections were behind when he took over the position and duties of Fire Marshal after Mr. Palmer retired. We were also informed that fire inspections had been moved under Mr. Crawford’s authority a couple of months previously.

Strickland and I met also met with the County Manager, the County Attorney, and two County Commissioners during our visit. We informed them that Haywood County was not in compliance with the required fire inspections. We were assured that the inspections would be caught up to be in compliance. Mr. Crawford was out of town at the time of our visit, but the County Manager indicated that the other inspectors under Mr. Crawford’s authority had also obtained probationary Fire certificates in order to perform the required inspections. Mr. Crawford has been in touch with Mr. Strickland and me numerous times giving us status updates. Based on our conversations and the updates, Haywood County if not in compliance, is very close to being up to date.

A violation of NC Fire Prevention Code Section 106 was verified. However, it appears Mr. Crawford was taking the appropriate actions to get this corrected prior to our visit. The fire inspections had only been under his authority for a brief period of time. He indicated he was in the process of training his inspectors to be able to perform the fire inspections under their probationary certificates.

Item 3 – No Expiration for Temporary Certificate of Compliance/Occupancy

“I requested an examination of the Certificate of Occupancy for the Haywood County Fairgrounds Arena Building from Bruce Crawford January 4, 2011. He indicated the building is under a Temporary Certificate of Occupancy, for which there is no time limit or expiration date, it can be extended indefinitely.... I charge Bruce Crawford with gross negligence for allowing a Temporary Certificate of Occupancy to remain valid for five years, and indicating to me that it can be extended indefinitely.”
(Miller’s complaint letter)

Crawford’s response:

“In April 2004 a permit was issued for the construction of the project known as the Haywood County Agriculture & Activity Center Arena. In August 2005 the project was completed, with the exception of two items. The sprinkler system was installed in the arena but a new water main capable of handling the load was still incomplete. Construction of the toilet facilities had not begun due to a lack of funds.

The water main was finished soon thereafter and in April 2006 the sprinkler system was tested and approved by the installer and the Fire Marshal (Palmer), a copy of which I sent to Richard Strickland. Upon completion of the sprinkler system, I was approached by a member of the fairgrounds board and asked if the arena could be used during the county fair. I made the decision to allow the use of the arena based on the fact that the sprinkler system was now approved, that there were accessible toilet facilities available in two adjacent buildings and that additional portable toilets would be provided, as was usual for the county fair. On June 1, 2006 I issued a temporary certificate of occupancy per 307.3 of the 2002 N.C. Administrative Code, with the understanding that the new toilet facilities would be constructed as soon as funds were available. The funds were projected to be available before the next fair season. I based my decision to issue a temporary c/o on criteria that I thought were sensible at the time.

The arena was closed for the season in late 2010 when it was brought to my attention that the temporary c/o was still in effect and I notified fairground officials it that was to remain closed until approved toilet facilities were installed and complete.

It was truly not my intention for the temp c/o to remain in effect indefinitely. Our permitting database does not automatically track temporary certificates of occupancy and it slipped through the cracks.

When I found out about this complaint I contacted the fairgrounds managers and asked for a list of all the events that have taken place since the temporary c/o was issued. The list revealed that the arena has been open for an event an average of 35 days per year with an average of 4 hours per day for each day of an event. I believe the limited use of the arena also contributed to the fact that the temp c/o fell through the cracks. None of the decisions I made were intended to allow anyone to circumvent the requirements of the code or to jeopardize anyone’s safety.

Funding has now been approved by the Board of Commissioners to construct the toilet facilities, which were reviewed at my request by Tim Morrison and have been subsequently approved. You can rest assured that the construction will follow Mr. Morrison’s approved plans to the letter.

In addition, we are currently reconfiguring our database to automatically track any future temporary c/o which may be issued.

It is my sincere hope that you find that my actions have not constituted gross negligence as charged by Mr. Miller.”

Staff Finding:

The NC Administrative Code Section 307.3 states:

“A temporary/partial Certificate of Compliance may be issued permitting occupancy for a stated period for specific portions of a building or service system that the inspector finds may safely be occupied prior to final completion of the entire building or system (General Statutes 153A-363 and 160A-423).”

NC General Statute §153A-363 states:

“At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a Class 1 misdemeanor.”

The Temporary Certificate of Compliance/Occupancy that was issued by Bruce Crawford indicated that the structure was safe for occupancy and would receive a final certificate of compliance/occupancy upon the completion of the rest room facilities, however there was no “stated period” listed as required by both the NC Administrative Code Section 307.3 and NC General Statute 153A-363.

A violation of the NC Administrative Code Section 307.3 and NC General Statute 153A-363 was verified.

Item 4 – Inadequate Restroom Facilities

“...the Haywood County Fairgrounds Board ran out of funds to complete the building as originally designed. Missing from the building, as stated in the Temporary Certificate of Compliance, supplied to me by Bruce Crawford, were the restroom facilities...

...has not even begun construction of the remaining amenities such as toilets and ADA components.”
(Miller’s original letter dated February 3, 2011)

Crawford’s Response:

“...I made the decision to allow the use of the arena based on the fact that the sprinkler system was now approved, that there were accessible toilet facilities available in two adjacent buildings and that additional portable toilets would be provided, as was usual for the county fair. On June 1, 2006 I issued a temporary certificate of occupancy per 307.3 of the 2002 N.C. Administrative Code, with the understanding that the new toilet facilities would be constructed as soon as funds were available. The funds were projected to be available before the next fair season. I based my decision to issue a temporary c/o on criteria that I thought were sensible at the time.”

Staff Finding:

Strickland and I verified restroom facilities were available in the adjacent buildings. The Plumbing Code Section 403.2.2 states:

“Every building and each subdivision thereof intended for public use shall be provided with facilities in accordance with this chapter. Required facilities shall be directly accessible to the public through direct openings or corridors from the area or areas they are intended to serve. Required facilities shall be free and designated by legible signs for each sex. Pay facilities may be installed when in excess of the required minimum facilities.”

The restrooms in the adjacent buildings were not directed by a corridor and so violated the Code requirements.

We could not verify that portable facilities were provided, but Miller's letter dated February 3, 2011 also referenced the minutes from the January 13, 2011 Haywood County Fairgrounds Board meeting which stated:

"Finally, regarding the lack of restrooms at the facility, the minutes of January 13, 2011 state: "General discussion by Ensley regarding a request by Monroe Miller for the past two years' of financial statements from the Haywood County Fairground occurred, as well as a potential problem with arena use since the planned restroom facilities are not in place. **Davis responded that rental organizations are required to provide portable restrooms for any events held in the arena, which should meet the requirements for the arena's use.** Ensley stated that he would share this information with Bruce Crawford, Haywood County Building Inspector." [For reference, Nancy Davis is the current secretary for the Haywood County Fairgrounds Board, and Kevin Ensley sits on both the Haywood County Fairgrounds Board and the Haywood County Board of County Commissioners.]"

The evidence above supports Crawford's response of February 17, 2011 to Miller's original letter dated February 3, 2011 which stated in part:

"I agreed to allow the use provided... that an appropriate number of portable toilets be provided."

None of the documentation available suggests that Mr. Crawford intended for the arena facility to be occupied without toilets. However, if the temporary certificate of occupancy was intended to be conditional, those conditions should have been clearly stated in the documentation of the temporary certificate of occupancy and they were not.

Not requiring appropriate toilet facilities before allowing occupancy of a building is a violation of Plumbing Code Section 403.2.2

Item 5 – No Accessible Route

"...has not even begun construction of the remaining amenities such as toilets and ADA components." (Miller's original letter dated February 3, 2011)"

Staff Finding:

The complaint was not specific in which ADA components were missing, but Strickland and I verified that there was not an accessible route in the arena building or from the arena building to the adjacent buildings. This violation was not noted on the Temporary Certificate of Compliance/Occupancy. The NC Accessibility Code Section 3.1.1 states:

"A minimum of one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking spaces, accessible passenger loading zones (if provided), public streets and sidewalks, to the accessible building entrance(s) which they serve."

The NC Accessibility Code Section 3.1.3 states:

"A minimum of one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site."

A violation of the NC Accessibility Code Sections 3.1.1 and 3.1.3 was verified.

Conclusions

The Miller complaint charges Bruce Crawford and Johnny Glance of the Haywood County Inspection Department violated GS 143-151.17(a)(6) in that they have "been guilty of willful misconduct, gross negligence, or gross incompetence".

Bruce Crawford – The following violations were confirmed against Mr. Crawford:

- Item 3 – No Expiration for Temporary Certificate of Compliance/Occupancy
- Item 4 – Inadequate Restroom Facilities
- Item 5 – No Accessible Route

The number and type of violations found by the investigation are sufficient to justify a hearing to determine if Crawford is guilty of willful misconduct, gross negligence, or gross incompetence.

Johnny Glance- The following violation was confirmed against Mr. Glance:

- Item 2- Inadequate Fire Inspections

The number and type of violations found by the investigation are sufficient to justify a hearing to determine if Glance is guilty of willful misconduct, gross negligence, or gross incompetence.