



MEMORANDUM

TO: Ohio Department of Commerce - Home Inspector Board

FROM: Common Sense Initiative Office

DATE: January 15, 2021

RE: R.C. §107.56 Referral—*Home Inspector Standards of Practice*

On February 23, 2020, Michael R. Parks referred for review under Ohio Revised Code (“R.C.”) §107.56 proposed administrative rules by the Ohio Home Inspector Board (“Board”), Ohio Administrative Code (“O.A.C.”) 1301:17-1-16 “Canons of Ethics” and 1301:17-1-17 “Standards of Practice.” The referral alleged the Board’s violation of antitrust laws by requiring home inspectors to perform electrical inspections. This memo represents the Common Sense Initiative (“CSI”) office’s determination under that statute.

ANALYSIS

I. The action is consistent with a clearly articulated state policy.

The Ohio Home Inspector Board’s proposed rules are consistent with clearly articulated state policy for the occupational licensure of home inspectors. The Ohio General Assembly specifically has tasked the Board with setting standards of practice and ethics for the home inspection industry. Ohio law states clearly what home inspection does and does not include. It explains that “‘home inspection’ means the process by which a home inspector conducts a visual examination of the *readily accessible components* of a residential building for a client¹” and prohibits a person from making any ascertainment of compliance with the Ohio Building Code unless the individual holds a certificate of competency as an electrical safety inspector.² The law also states that home inspection does not include a “determination of compliance with applicable statutes, rules, resolutions, or ordinances, including, without limitation, building, zoning, or historic codes.”³

¹ R.C. 4764.01.

² R.C. 3783.01 and 3783.06.

³ R.C. 4764.01.

To accomplish this, the legislature grants the Board specific rulemaking authority to adopt “requirements for conducting home inspections, standards of practice for home inspectors, and conflict of interest prohibitions,” and to establish “a set of standards of practice and canons of ethics for the home inspection industry.”⁴

The Board has carried out this responsibility consistent with the legislature’s clearly articulated policy. Specifically, the rules *prohibit* a home inspection’s determination from being represented as an electrical inspection. O.A.C. 1301:17-1-16 states that “Licensees *shall not represent a determination of compliance* with Ohio Residential, Mechanical, Plumbing, or Electrical Codes....” Similarly, O.A.C. 1301:17-1-17 (T) states that “A licensee shall inspect a property’s *readily accessible components* of the electrical system during a home inspection and report in the home inspection report the licensee’s findings....” Thus, the proposed rules are consistent with the clearly articulated state policy for the conduct of home inspections outlined in Ohio law.

II. The state policy is not merely a pretext for anticompetitive conduct that could be subject to state or federal antitrust law.

The policy effectuated by the Board’s administrative rules is also not a pretext for anticompetitive conduct. The rules are limited in their application to licensed home inspectors and do not permit a licensed home inspector to make a determination of compliance with building or electrical codes. Since they prohibit such a determination, they cannot limit competition for other individuals who are certified to practice electrical inspection under separate sections of law (R.C. 3783.01 and 3783.06). They similarly do not prohibit the public from receiving services of electrical safety inspectors. In fact, O.A.C. 1301:17-1-16 even states that a home inspector “may recommend a client seek further evaluation and repair or remediation of suspected safety hazards by a certified or licensed professional.”

Determination

Accordingly, CSI determines that the proposed rules from the Ohio Home Inspector Board are supported by and consistent with a clearly articulated state policy and are not a pretext for anticompetitive conduct.

⁴ R.C. 4764.05.