



# ***CHIEF'S FILE CABINET***

***Ronny J. Coleman***

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## Getting Permission; Go Ask Your Mother

Kids are the world's leading authority on how to play one person off against another. If you are a parent you know how it works. A child will come to you and say, "Can I go over to Johnny's house?" If you say no they will frequently go to your spouse and repeat the same question in hopes of obtaining a yes. Of course, once they have the yes, they're out of there. Later on, when you find out about it you are upset but their defense is: someone in authority (your spouse) told them it was okay.

There's an institutional version of this. It consists of new product development in which something is brought to us at the local level by a manufacturer who has created a new solution to an old problem. Basically, they will come to us asking permission to use a product for a specific application. Frequently we say no.

A common rationale is that new products have not been tested - they are unproven. Justifiably, a local jurisdiction is unwilling to put the credibility of that organization on the line by authorizing that product or service to be utilized. That's a pretty prudent way of thinking, but it has its downsides.

What happens if we disapprove something because we really believe that it is inappropriate and they go to someone else and get permission to have it used? Where do we stand then?

Let's go back to the parental analogy. With my own children I learned a long time ago that when they asked for permission to do something, I was well advised to consult with my spouse before I gave permission. My basic response was, "Let's go discuss it with your mother." Frankly, I was unwilling to give up my right to make the decision but I wanted to make sure it was a joint decision. This helped assure that there would be minimum conflict and misinterpretation of the ultimate decision.

My fallback position was almost as simple but had a similar premise. If I wasn't really overly concerned but I wanted to make sure everyone was on the same wave length then I would say, "It's OK with me, but go make sure you have permission of your mother." The provision was that as soon as they had finished discussing it with their mother, I expected them to return to me with the permission in hand so we could jointly agree upon expectations.

As the authority having jurisdiction, we often take on the connotation of being the "father figure". People are always coming to us to get permission. When they don't get it they want to go find a mother figure and convince her that Dad was wrong. This is manifested in at least two distinct areas of code enforcement. The first of these has to do with dealing with approval processes of alternate methods. The second has to do with appeal processes over code interpretation. Both these can be sources of a great deal of irritation to fire marshals and fire chiefs if they get derailed.



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So, let's talk about some ways to make sure that neither of these processes gets too far down the track without having some kind of mechanism to reduce the negative impacts. First, we should deal with the approval processes. I think we all recognize that local fire and building departments do not have the resources to conduct tests and perform research for approving anything. That's the purpose behind testing labs and listing services. Whenever someone approaches us with an alternate method or means of operation, our first strategy ought to be to do everything we possibly can to link them up with a resource that can perform that function as quickly as possible.

Of course, we can just say no and send them on their merry way, but by helping to counsel them through the process and make sure they are talking to the right agencies, it also allows us to participate in the process to determine what kinds of tests are applied and heightens the awareness on our own part of what the method and/or alternate goes through in order to achieve recognition by that listing service.

Most of the standard code procedures state that by being listed by a testing agency one does not have an automatic right to be approved by every single solitary agency. Many individual fire departments have the ability, depending upon the provisions of their own locally adopted code to question a product or service. This can be done in spite of its being tested and labeled by another organization. Every time this happens, of course, there is conflict and controversy and the local authority frequently finds itself on the defense of trying to justify why it doesn't want something to be done and not having the scientific data to back it up.

So, it follows that authorities having jurisdiction should maintain a high degree of networking with organizations such as Factory Mutual and Underwriter's Laboratory so that we are more knowledgeable regarding the processes they use to put items on list and to grant approvals.

The appeals process is a lot stickier. It probably happens a lot more frequently. Whenever people are attempting to accomplish individual objectives, i.e., a builder has his perspective and an inspector may have another, there's always the possibility there is going to be differences of opinion. Frankly, the most intelligent of human beings can often take the same information and come to totally different conclusions. However, the appeals process does not have to be a totally adversarial relationship. Whenever circumstances begin to approach the point where it is clear that a third party must step in and make a decision there is always time to take the following step. Frequently, the adversarial relationship results in the person taking their case to the city manager, city council or Board of Supervisors. They want to get permission from someone else.

We should take steps to keep these issues within our own arena. That step consists of conducting a fact finding interview with the inspector and with the person requesting the relief. Fact finding should



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consist of evaluating specifics; not opinions, not generalities, but rather a reviewing of those items that have been documented through the process. Correspondence, copies of codes, statements from standards, all of these can be used to build toward arriving at some settlement without having to pull in a third party.

You will note that we are not advocating that you attempt to get people to change their mind about their conclusions. Instead, this part of the process consists almost entirely of making sure everyone is saying exactly what they mean. For someone to be given relief from an interpretation, it is extremely important you get the opposition to state the nature of the relief they are requesting. Obviously, there are times when individuals would just as soon we turn our back and ignore something and act as if a code infraction doesn't exist. There is sufficient body of knowledge about the legal duty to warn and perform that this misperception can usually be removed during an appeals process.

On the other hand, it is often amazing how often two people will get on opposite sides of a table and be communicating on two separate frequencies. In one case, the person may be talking about X and the other person talking about Y and they "can't agree."

If you review most of the standard codes, the appeals process actually has a step to it in which a third party group of people come together and engage in a similar process; however, what they come out with is almost binding in some cases and may be counterproductive to your interests as an AHJ.

What we are suggesting is a development of an internal process in organizations to make sure that those things that do go to appeal are elephant bullet problems. If you haven't heard the joke about mice bullets and elephant bullets it will be explained in another column.

Last but not in any way the least, once you have gone through this kind of process, it is important you complete it and bring it to closure by documentation. Every fire prevention bureau and/or building department that engages in either of these two processes should have at least one file folder or a notebook that contains the documentation of interpretations and the results of each finding. The purpose of these documents is not necessarily to inhibit the development of subsequent interpretations but rather to develop an institutional memory for what was done the last time this same problem occurred.

Now that we've explored this analogy and we've used the parental relationship to try to clarify it, let me assure you there's another problem that will come to you sooner or later down the road. That's the role of grandparents. Every parent in the world knows that while they may have their child perfectly disciplined and have established some specific ground rules, as soon as the grandparents show up on the scene everything is out the window. In our case, the grandparents we're talking about most likely are state law and federal law. More about that later.