

Dept. of Justice: AG opinion issued regarding 2011 Wisconsin Act 21

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MADISON, Wis. – Today, Attorney General Josh Kaul [issued an AG opinion](#) addressed to Wisconsin Governor Tony Evers. It concerns the applicability of certain legislation, 2011 Wisconsin Act 21, to state agencies' authority to promulgate and enforce administrative rules. It also withdraws a previous AG opinion, [OAG-04-17](#), which opined that Act 21 invalidated a rule requiring fire sprinklers in multifamily homes.

One provision in Act 21 concerns an agency's general powers or duties and the significance of those provisions for rulemaking authority. Attorney General Kaul concluded that this provision does not alter existing, explicit grants of rulemaking authority, regardless of whether the statute could be characterized as broad or "general."

Another provision of Act 21 concerns certain statutes providing specific standards, requirements, or thresholds. Attorney General Kaul concluded that this provision of Act 21 does not alter an agency's other existing authority to promulgate standards, requirements, or thresholds.

The attorney general also concluded that nothing in Act 21 alters existing, properly promulgated rules, and that agencies may therefore continue to implement and enforce existing rules, as long as the rule was promulgated in accordance with the rulemaking procedures in place at the time.

Finally, Attorney General Kaul concluded that the previous AG opinion analyzing Act 21 in the context of the fire-sprinkler rule was contrary to the plain language of the governing statutes and for that reason withdrew that opinion.

A copy of the Attorney General's opinion is [available here](#).

A copy of the opinion request is [available here](#).