

## No. 245

## LICENSES—PLUMBERS—CITIES AND TOWNS

**Held:** Any person desiring to engage in the business of plumbing must take an examination and procure license in each city or town with population of 3000 or over wherein he desires to engage in such business.

September 16, 1941.

Mr. J. Miller Smith  
County Attorney  
Lewis and Clark County  
Helena, Montana

Attention: Mr. E. M. Hall  
Deputy County Attorney

Dear Mr. Smith:

I have your request for my opinion on the following question:

Under the provisions of Section 5183 to 5193, Revised Codes of Montana, 1935, must a plumber take an examination and secure a license in each city or town with a population of three thousand or over in which he desires to carry on his business?

Section 5183, Revised Codes of Montana, 1935, provides:

"Any person working at the business of plumbing, in any incorporated city or town in this state containing more than three thousand inhabitants, either as a master plumber or as a journeyman plumber, shall first secure a license as hereinafter provided."

Section 5184, Revised Codes of Montana, 1935, provides:

"Any such person desiring to work at the business of plumbing in any city or town shall file his application for a license with the secretary of the board of examiners of such city or town, and shall, at such time and place as may be designated by the board of examiners of plumbers of such city or town, be examined as to his qualifications for working in such business."

Section 5185, Revised Codes of Montana, 1935, insofar as applicable here, provides:

". . . the mayor of each such city or town shall appoint a board of plumbing examiners, consisting of three members—one journeyman plumber, one master plumber and the health officer of said city or town. Two of the members of said board shall be practical plumbers, well versed in modern sanitary plumbing, sanitation, and sewerage . . . In those cities which have a plumbing inspector, such plumbing inspector shall ex-officio, be a member of such board of examiners. . . . Any applicant for a license to work at the business of plumbing in any such city or town shall be examined as to his qualifications by the board of examiners of plumbers for such city or town. It shall be the duty of said board to examine each applicant for a license as provided for in this act, two to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of master plumber or a journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or journeyman plumber in any of said cities or towns."

In construing these statutes, we must consider every part of their subject matter, object and intent. (*Daniels v. Andes Ins. Co.*, 2 Mont. 78.)

In creating a board of plumbing examiners in each city or town of a population of three thousand or more, it was the evident intention of the legislature to permit such boards to exercise authority over the business of plumbing in their respective cities and towns. This interpretation is reasonable, when we consider sanitary conditions, sewage systems, etc., may be different in different cities.

It will be noted Section 5183, *supra*, provides "any person working at the business of plumbing in **any** incorporated city or town" shall secure a license as in the act provided. And Section 5184, *supra*, provides "Any such person," meaning, obviously, in view of the preceding section, any person desiring to work at the business in such city, must file his application with the secretary and be examined by the board of examiners of that city. Then Section 5185 provides such person desiring to work at the business "shall be examined as to his qualifications and fitness for carrying on the business." This section further provides that, if he passes the examination as prescribed by the board, "a license shall be issued to such applicant . . . authorizing him to engage in the business and occupation . . . which license . . . shall authorize the holder thereof to carry on the business . . . in any of said cities and towns." We think such reference is to the city or town in which he desires to engage in business.

Considering all these sections together, it is obvious the legislature intended any person desiring to work at this business in any city or town of the population designated must first submit to an examination as to his qualifications and fitness to carry on the business in that city or town, and if he is successful in such examination, procure a license, which license authorizes him to carry on the business in that certain city or town. We think this must be the obvious intention. Otherwise it would seem unnecessary that each of such cities and towns have an examining board appointed by the mayor of such city or town. If this were not the intention, the legislature might very well have provided for a state board as it has done in the case of architects (Sections 3231-3232), druggists (Sections 3173-3174), barbers (Sections 3228.24-3228.27), dentists (Sections 3115.1-3115.5), and many others, the most recent of which is the Board of Embalmers and Funeral Directors (Chapter 67, Laws of 1941.)

Many of the states have acts similar to ours, which have been upheld on constitutional grounds. A note in 36 A. L. R., page 1342, states:

"By the great weight of authority, statutes requiring the examination and licensing of plumbers, and providing rules and regulations for plumbing and drainage, in the interest of public health are valid as a proper exercise of the police power, and do not deprive members of the craft affected of personal right guaranteed by the state and Federal constitutions." Citing cases from Colorado, Illinois, Kentucky, Maryland, Massachusetts, Missouri, New York, Pennsylvania, Tennessee, Texas, and Wisconsin.

In the case of *Ex Parte Smith*, 231 Mo. 111, 132 S. W. 607, the court, in holding a city may, without violating the 14th amendment to the Federal Constitution, require all plumbers to qualify before a board of examiners, and to pay a license fee of one dollar, said:

"The natural right to health, liberty and the pursuit of happiness secured by our Constitution and Bill of Rights is not an absolute right. The individual must sacrifice a part of his particular interest if the sacrifice is a necessary one in order that organized society as a whole shall be benefited. . . . The right of a citizen under our Constitution to follow any legitimate business, occupation, or calling which he may see fit to engage in, and to use such right as a means of livelihood, is fully secured, but it is subject to the paramount right of the state to impose upon the enjoyment of such a right a reasonable regulation which the public welfare may require . . ."

It is therefore my opinion a person desiring to engage in the business of plumbing in any city or town in the state with a population of three thousand inhabitants or over must submit to an examination by the board of plumbing examiners of such city or town and secure a license as provided by Section 5185, Revised Codes of Montana, 1935, and further, such license authorizes such person to engage in the business of plumbing only in the city wherein such license is issued.

Sincerely yours,

JOHN W. BONNER  
Attorney General