

**Opinion No. 43**

**Licenses—Examinations—Plumbers—Board of Examiners—  
Regulations—Administrative Law.**

**Held:** The Board of Plumbing Examiners is authorized and directed to issue State plumbing licenses to present holders of city plumbers licenses.

**The Board of Plumbing Examiners is authorized to make any rules and regulations reasonable and necessary to effect the intention of the Legislature that a uniform system of plumbing examinations and licensing be established in the State.**

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August 8th, 1949.

Mr. H. B. Foote, Secretary  
State Board of Plumbing Examiners  
Helena, Montana

Dear Mr. Foote:

You have requested my opinion on the question of the authority of the Board of Plumbing Examiners to issue licenses to holders of city licenses, which city licenses were issued under previous State Statutes; and also on the extent of the Board of Plumbing Examiners to issue rules and regulations for the conduct of its business.

The State Board of Plumbing Examiners is established by the Legislature in Chapter 203, Session Laws of 1949. This Chapter, by Section 12, specifically repealed Sections 5183 through 5193, Revised Codes of Montana, 1935. The repealed Sections established a system of licensing plumbers in any incorporated city or town in this State containing more than three thousand inhabitants. By repealing those Sections and substituting therefore the system of State examinations and State licenses, the Legislature seeks to establish a uniform system of licensing throughout the entire State.

In Section 10 of Chapter 203 (*supra*) the Legislature made provision for the exchange by city licensed Master and Journeymen Plumbers for the respective State license. Section 10 reads:

"All Master and Journeymen Plumbers, who are now holders of a city license shall be entitled to a State license, to be issued by said Board of Plumbing Examiners immediately after its organization as provided for by this act, without submitting or being required to submit to any examination whatever, upon the payment of each of the applicants for such licenses of the sum of twenty-five dollars in the case of the Master Plumber, and ten dollars in the case of a Journeyman Plumber, and such license when issued, shall be renewed from time to time annually as hereinbefore provided."

Thus, in order that those plumbers who have taken city examinations under the prior law, and who have been licensed as a result of those examinations, should not be required to undergo additional examinations the Legislature has provided for exchange of licenses.

By virtue of the above quoted section, the State Board of Plumbers Examiners is authorized and directed to immediately issue licenses to those holders of present city licenses who take advantage of the provisions of said section, and make payment of the fee.

Under Section 9 of Chapter 203 (supra) the Board of Plumbing Examiners is authorized to adopt such rules and regulations as are necessary to carry out the intent of the act.

The Legislature has delegated to the Board a power to make rules and regulations.

42 American Jurisprudence, Public Administrative Law, Section 53 states in part:

"The scope and extent of the power of administrative authorities to enact rules and regulations is limited by the Federal and State Constitutions and the statutes granting them such power.

And further:

"The extent of the power must be determined by the purpose of the act and the difficulties its execution might encounter. Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a "regulation" which is out of harmony with, or which alters, extends, or which alters, extends, or limits, the statute being administered, or which is inconsistent with the expression of the lawmakers intent in other statutes. . . . Thus, where a right is granted by statute, the officer administering such statute may not by regulation add to the conditions of that right a condition not stated in the statute, nor may he bar from that right a person included within the terms of the statute. . . ."

Thus, in order to determine the scope of the authority of the Board to make rules and regulations, it is necessary to examine the act.

The title of the act states that the act is designated to establish a system of State examination for Master and Journeyman Plumbers, to fix fees to be charged for State licenses, to direct the disposition of the funds received from the collection of those fees, and to provide penalties for violations of the provisions of the act.

Thus, the Board of Plumbers Examiners are authorized to make whatever rules are necessary to carry out those intentions.

In the body of the act, Section 3 states in part:

"It shall be the duty of the said Board to examine each applicant for a State license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a Master Plumber or Journeyman Plumber. . . ."

Section 4 sets forth that a written application must be filed with the Secretary of the Board, which application must contain certain stated

information, and sets forth that the applicant shall "at such time and place as may be designated by the said Board . . . be examined as to his qualifications for said license."

Section 8 sets forth that the State license and permit may be revoked at any time for incompetency, dereliction of duty, or other sufficient cause, after a full and fair hearing by the Board.

Thus, the State Board of Plumbing Examiners is authorized and directed to make rules and regulations necessary to carry out the intent of the act which established the State system of plumbing examinations. The scope of such rules will be tested by the reasonableness and necessity for such rule or regulation under the statutory direction of the Legislature.

It is therefore my opinion that the Board of Plumbing Examiners is authorized to issue without examinations State licenses in exchange for current city licenses to the present holders of city licenses.

It is further my opinion that the statute authorizes the Board to establish such rules and regulations as are reasonable and necessary in order to carry into effect the directions of the Legislature that a uniform system of plumbers examinations and licenses be established in the State.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.