

VOLUME NO. 44

OPINION NO. 12

CITIES AND TOWNS - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons applying for plumbing permit be properly licensed;

CITIES AND TOWNS - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons doing work in "field of plumbing" have state plumber's license;

LICENSES, PROFESSIONAL AND OCCUPATIONAL - License required for persons working in "field of plumbing";

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Persons legally entitled to apply for permit pursuant to Uniform Plumbing Code;

LOCAL GOVERNMENT - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons applying for plumbing permit be properly licensed;

LOCAL GOVERNMENT - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons doing work in "field of plumbing" have state plumber's license;

MUNICIPAL GOVERNMENT - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons applying for plumbing permit be properly licensed;

MUNICIPAL GOVERNMENT - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons doing work in "field of plumbing" have state plumber's license;

PLUMBERS, BOARD OF - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons applying for plumbing permit be properly licensed;

PLUMBERS, BOARD OF - Responsibility of city, certified to enforce Uniform Plumbing Code, to require that persons doing work in "field of plumbing" have state plumber's license;

MONTANA CODE ANNOTATED - Sections 7-1-101, 7-1-111, 7-1-111(11), 37-69-101(3) and (7)(a), 37-69-102(1)(a) and (d), 37-69-301 to 37-69-304, 37-71-201 to 37-71-213, 50-60-301, 50-60-302(1), 50-60-504, 50-60-506(3);

MONTANA CONSTITUTION - Article XI, section 6;

OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 55 (1990).

- HELD: 1. The City of Billings may not allow public utility contractors to install water and wastewater service lines which extend from the public water or sewer main to a point within the boundaries of the private property or within 20 feet from any foundation wall of the private residence, unless the public utility contractor also has a plumber's license issued by the state.
2. The City of Billings is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is duly licensed by the state as a plumber if the type of work described in the permit application so requires.

June 20, 1991

Annie M. Bartos
Chief Legal Counsel
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0501

Dear Ms. Bartos:

On behalf of the Board of Plumbers of the State of Montana, you have requested my opinion on the following two questions:

1. May the City of Billings allow public utility contractors to install water and wastewater service lines running from residences in the city to connect with the city's sewer mains, when these persons are not licensed as plumbers by the State Board of Plumbers?
2. Is the City of Billings required to have its plumbing inspectors and/or enforcement personnel check persons doing plumbing work to ascertain if those persons are duly licensed as plumbers?

Your opinion request is prompted in part by a concern that there may be a conflict between Montana statutes and the ordinances of the City of Billings regarding the licensing requirements of a person obtaining a permit from the City of Billings to install water or wastewater service lines running from the residence involved to the public water or sewer mains. The City of Billings is a self-government city having adopted its charter in 1976. Billings, Montana Charter, § 1.01.

The Montana Constitution permits local government units which have adopted a self-government charter to "exercise any power not prohibited by this constitution, law, or charter." Mont. Const. Art. XI, § 6; § 7-1-101, MCA. Under this constitutional provision, "the assumption is that a local government possesses the power, unless it has been specifically denied." D & F Sanitation Service v. City of Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986). Under Montana law, a city with self-government powers may supersede state law by ordinance, so long as it is not expressly prohibited from doing so by its charter or by state law or constitution. See 43 Op. Att'y Gen. No. 55 (1990).

Pursuant to section 7-1-111, MCA, a local government unit with self-government powers is prohibited from exercising any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation. § 7-1-111(11), MCA. The state has

the exclusive authority to set the standards of competence for those persons working in the "field of plumbing" and requires that such persons be licensed as journeyman or master plumbers. § 37-69-301, MCA. There are statutory exceptions to the licensure requirement including when an owner of a single family residence, used exclusively for the owner's personal use, makes the installation for all sanitary plumbing and potable water supply piping; when a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser; and when a city, town, water district, or water user association extends its own water and sewer mains. § 37-69-102(1)(a), (d), MCA.

Pursuant to Montana law,

[a]ny person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided.

§ 37-69-301, MCA. "Field of plumbing," as used in this section, is defined as the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof. § 37-69-101(4), MCA. A "plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises. § 37-69-101(7)(a), MCA. A "drainage system" is defined as all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than two feet outside the building way. § 37-69-101(3), MCA.

For the purpose of the license requirements, the "field of plumbing" does not extend to work done beyond the property line of the premises or 20 feet from the building foundation line, whichever is the shorter distance from the building foundation. Therefore, the state does not require a plumber's license for the installation of or repair work on a water or sewer service line from the point where it connects with the public main to the property line or to that point 20 feet from the building foundation. However, a person who works on the service line at any point within the premises as determined by the property line, or that area within 20 feet of the building foundation, and also connects or disconnects the service line from the public water supply or sewer system must have a plumber's license issued by the state.

Your question assumes that work is to be done on the water or sewer service line from the public main to the residence. This includes work within the "field of plumbing," as defined in the state licensure statutes, and therefore a plumber's license is required by the state for this work.

The City of Billings does provide and operate a municipal water and wastewater system. See Billings, Montana, City Code, ch. 26. Pursuant to the ordinances governing these systems and the regulations promulgated by the public utilities department, permits are required to install or make any alterations or repairs to a service line or to connect a service line to a public water or sewer line. See "Rules and Regulations Governing Water and Wastewater Service, Public Utilities Department, City of Billings, Montana," chs. 34 and 36. The entity requesting a permit must have either a plumbing contractor's license or a public contractor's license on file at the city finance director's office.

Pursuant to section 6-511 of the Billings, Montana, City Code, a plumbing contractor, in order to be licensed by the city, must maintain a current master plumber's license issued by the state. However, the qualifications for a public contractor's license, set by state law, do not require that a public contractor have a plumber's license. §§ 37-71-201 to 213, MCA. Therefore, the determination as to whether a plumbing contractor's license is required for work on a water or wastewater service line is dependent on the location of the work to be done on the particular service line. If the work to be done is located within the property line of the premises or within 20 feet of the building foundation, it falls within the definition of "field of plumbing" and a plumber's license is required.

Therefore, the City of Billings may not allow public utility contractors to install water and wastewater service lines which extend from the public water or sewer main to a point within the boundaries of the private property or within 20 feet from any foundation wall of the private residence, an area which includes work within the field of plumbing as defined in the state plumbing licensure statutes, unless the public utility contractor also has a plumber's license issued by the state.

Your second question is whether the City of Billings is required to have its plumbing inspectors and/or enforcement personnel check persons doing plumbing work to ascertain if those persons are duly licensed as plumbers. As discussed above, the state has the exclusive authority to set the standards for professional occupational competence and has done so for the "field of plumbing" in Title 37, MCA. The point at which the city has responsibility to make sure that state licensing requirements are met is when the city issues permits for plumbing installations as required under its building code. A discussion of the city's responsibilities in this area is helpful.

The Montana Department of Commerce (hereinafter Department) has the authority and duty to prescribe and to enforce the minimum standards for all

plumbing installations and maintenance within the state. § 50-60-504, MCA. State law, however, does allow a municipality or a county to adopt a building code by ordinance which would apply to the municipal or county jurisdictional area. This municipal building code may include only those codes adopted by the state. § 50-60-301, MCA. The local government may not enforce a particular code unless the code which it has adopted and an enforcement program for that code have been filed and approved by the Department. § 50-60-302(1), MCA. The City of Billings adopted the "Uniform Plumbing Code" and the "Uniform Plumbing Code, Appendix, 1988 Edition" (hereinafter "UPC"), Billings, Montana, City Code, § 6-501, and the building code has been certified by the Department.

Section 20.4 of the UPC requires that a permit be obtained from the administrative authority, in this instance the City of Billings, for any person "to install, remove, alter, repair or replace or cause to be installed, removed, altered, repaired or replaced any plumbing, gas or drainage piping work or any fixture or water heating or treating equipment in a building or premises." As defined in the UPC, a "drainage system (drainage piping) includes all the piping within public or private premises, which conveys sewage or other liquid wastes to a legal point of disposal, but does not include the mains of a public sewer system or a public sewage-treatment or disposal plant." § 105(f), UPC. The "building sewer is that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system or other point of disposal." § 103(n), UPC. The "building drain is that part of the lowest piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two (2) feet (.6m) outside the building wall." § 103(m), UPC. Therefore, pursuant to the UPC adopted by the City of Billings, a permit from the city is required for any plumbing work done inside the building and extending to the connection of the building sewer with the public water or sewer main.

Section 20.6, UPC, states as follows:

Any person *legally entitled* to apply for and receive a permit shall make such application on forms provided for that purpose. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The Administrative Authority may require plans, specifications or drawings and such other information as he may deem necessary. [Emphasis added.]

The UPC does not specifically define "legally entitled" within the context of the code. However, the only legal requirements placed upon a person doing plumbing work, within the state, are those professional qualifications set forth in the licensure statutes. §§ 37-69-301 to 304, MCA. In the context of the

state licensure requirements and the plumbing codes adopted by the state and, through state approval, adopted and enforced by the municipality, a person is legally entitled to apply for a permit to do plumbing work only if he or she has complied with the necessary state licensing requirements.

When a city has adopted the UPC as part of its building code and the code program has been certified by the Department, a permit from the city is required for a plumbing installation; however, a state permit is no longer required. § 50-60-506(3), MCA. Therefore, the city has the sole responsibility to issue permits, and in order to comply with the UPC and be consistent with state law in the area of plumbing standards and regulations, the city must determine as a threshold matter if the applicant is legally entitled to do the work covered in the permit application. This responsibility includes making a determination as to whether the work described in the application falls within the "field of plumbing" as defined in the licensure statutes, thereby requiring that the person making the application be duly licensed by the state, and whether any exceptions to the plumbing licensure requirements apply.

Once the city determines that an applicant is legally entitled to apply for a permit and the permit should be issued, it has no further responsibility to have its inspectors or enforcement personnel check persons doing plumbing work to see if those persons are duly licensed by the state.

THEREFORE, IT IS MY OPINION:

1. The City of Billings may not allow public utility contractors to install water and wastewater service lines which extend from the public water or sewer main to a point within the boundaries of the private property or within 20 feet from any foundation wall of the private residence, unless the public utility contractor also has a plumber's license issued by the state.
2. The City of Billings is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is duly licensed by the state as a plumber if the type of work described in the permit application so requires.

Sincerely,

MARC RACICOT
Attorney General