

## Opinion No. 54-5971

June 10, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Edward P. Corcoran, Engineer State Plumbing Administrative Board 307 Lead Avenue, SW Albuquerque, New Mexico

{\*428} On June 3 you addressed an inquiry to this office concerning an ordinance passed by the Town of Grants, a copy of which was enclosed. This ordinance, being Ordinance No. 77, purports to provide for a regulatory license for persons engaged in the business of installing, altering and repairing of all piping conveying gas as a fuel to gas appliances etc. The ordinance requires a bond for all such persons to be posted with the Town of Grants in the sum of \$ 2,500.00. You ask whether or not such an ordinance is valid under the laws of this State.

The Legislature of this State, in their 1949 session, passed a plumbing administrative law, which is compiled as §§ 51-3001 et seq., 1941 Comp., pocket cumulative supplement. This law, at §§ 51-3008 and 51-3009, provides for the licensing of plumbers within the State of New Mexico. These statutes are regulatory and any person engaged within the State in the business of plumbing or gas {\*429} fitting must obtain a license from the Plumbing Administrative Board before engaging in such occupation.

The law concerning licensing by a municipality for regulatory purposes in a field wherein the State has assumed power is discussed at length in the case of **City and County of San Francisco v. Boss**, 189 P. 2d 32, wherein the State had promulgated a code for the licensing of contractors and the City of San Francisco likewise attempted to regulate the same contractors, the Court said:

"It is apparent that the State has adopted a broad and comprehensive plan for licensing contractors throughout the entire State, for examination as to their qualifications and fitness to engage in their various activities, for licensing only those who prove themselves qualified by satisfactorily passing examinations, and for punishing those who prove themselves incompetent or unfaithful to the trust imposed in them. This is a matter of statewide concern and is not one that can be safely entrusted to regulation by each chartered city."

They held further that the State had occupied the field of licensing of contractors throughout the State **to the exclusion of municipal regulation thereon in a form other than for revenue only.**

In the case of *Agnew v. City of Los Angeles et al*, 243 P. 2d 73, the Court held that the licensing provision is a matter of general and statewide concern, and is not a municipal affair that concerns only the inhabitants of a chartered city and which is subject to local regulation; (2) the state, . . . has adopted a board and comprehensive plan for licensing

contractors . . .; (3) the general law has fully occupied the field; (4) a state license implies permission to the licensee to conduct his business at any place in the state, and this permission should not be circumscribed by local authorities; (5) a city ordinance is invalid if it attempts to impose additional requirements."

Of course, the city may impose an occupation tax authorized under our law, but such an occupation tax must be a uniform tax based upon some general and broad classification and cannot be directed in such a manner that it would discriminate against any occupation or any class of persons. See **State ex rel New Mexico Dry Cleaning Board v. Cauthen**, 48 N.M. 436, 152 P. 2d 255, and **Mitchell v. City of Roswell**, 45 N.M. 92, 111 P. 2d 41.

Therefore, it is the opinion of this office that an ordinance which attempts to license local plumbers or gas fitters and regulate such business within the municipality and the bond requirement by such municipality is illegal under the laws of this State by reason of the fact that the State has occupied the entire field for the purpose of regulation to the exclusion of the municipalities.

We sincerely hope that this has answered your inquiry.

By: Fred M. Standley

Assist. Attorney General