

## Opinion No. 55-6263

August 26, 1955

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

**TO:** Mr. E. P. Corcoran, Chief Inspector, New Mexico Plumbing Administrative Board,  
307 Lead Avenue, S.W., Albuquerque, New Mexico

We have your letter of August 18 in which you request an opinion as to whether the bonds required by Chapter 242, Laws of 1955, for master plumbers and master gas fitters can be subjected to third party claims.

The pertinent section of Chapter 242, Laws of 1955, is § 21, which reads as follows:

"Any applicant for a master plumbers' license or a master gas fitter's license shall, before issuance of such license, execute and deliver or cause to be executed and delivered in his behalf or in behalf of his firm, partnership or corporation to the Secretary of State of the State of New Mexico, two good and sufficient bonds with reputable corporation surety authorized to transact business in New Mexico, or other suitable sureties to be approved by the board, the first being in the penal sum of Two Thousand Five Hundred Dollars (\$ 2,500.00), with the people of the State of New Mexico named as obligee, conditioned that applicant will perform all the duties required of him under this Act and comply with all requirements of law, and the other being in the penal sum of Five Hundred Dollars (\$ 500), with the Plumbing Administrative Board of the State of New Mexico named as obligee, conditioned for the payment of inspection fees provided for in this Act."

We observe that two bonds are required, one for \$ 2,500.00 and one for \$ 500.00. The \$ 2,500.00 bond is to be made to the people of the State of New Mexico as obligee and is conditioned upon the applicant performing all duties required of him under the act and in complying with all requirements of the law. The second bond for \$ 500.00 is to the Plumbing Administrative Board of the State of New Mexico as obligee and is conditioned upon the payment of inspection fees provided by this act (Chapter 242, Laws of 1955).

It is the opinion of this office that the \$ 2,500.00 bond could be sued on by any person injured by the failure of the obligor to comply with the duties of Chapter 242, Laws of 1955, and other requirements of the law. Since the Legislature saw fit to make the obligee of this bond the people of the State of New Mexico, it seems clear that it was the intent of the Legislature to grant any person injured by reason of the obligor's failure to comply with the laws and the duties set out in Chapter 242, Laws of 1955, a right to sue upon this bond. See *Scott v. Feilschmidt, et al*, 182 N.W. 382, 191 Iowa 347.

Strength is added to this conclusion by reason of the fact that the second bond is to be made to the Plumbing Board, itself, and has as its purpose the guarantee of the payment of fees charged under the provisions of Chapter 242, Laws of 1955.

If the Legislature had not intended that third parties were to be given special rights to sue on the bond, there would be no reason for requiring the second bond in the sum of \$ 500.00 inasmuch as the \$ 2,500.00 bond would have covered the matter.

By Paul L. Billhymer

Assistant Attorney General