

Opinion No. 57-214

August 26, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Elery G. Cooper, Office Manager, Contractors' License Board, P. O. Box 1179,
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QUESTION

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Does a contractor, duly licensed by the office of the Contractors' License Board to enter into the business of "excavating and trenching, land leveling, pipeline construction, septic tanks and cesspools construction and cleaning, utilities construction, sewer lines, welding, sprinkling systems, water lines, tank construction," have authority to lay and construct sewer lines on and across private property to within three feet of a residence or other type building or commercial structure?

CONCLUSION

No, this is plumbing and under the Plumbing Board.

OPINION

ANALYSIS

The instant question arises out of an alleged conflict of authority imposed on the State Contractors' Licensing Board, and that described in stating the duties of the Plumbing Administrative Board.

Looking first to the general statement defining and fixing the area of responsibility of the Contractors' Licensing Board, we find, at § 67-6-13, N.M.S.A., 1953 Compilation, as follows:

"A contractor within the meaning of this act is a person, firm, copartnership, corporation, association, or other organization, or any combination of any thereof, who for either a fixed sum, price, fee, percentage, or other compensation other than wages, undertakes or offers to undertake, or purports to have the capacity to undertake to construct, alter, repair, add to or improve **any building, excavation, or other structure, project, development or improvement, or any part thereof**; Provided, that the term contractor, as used in this act, shall include subcontractor, but shall not include any one who merely furnishes materials, or supplies without fabricating the same into, or

consuming the same in the performance of the work of the contractor as herein defined. (Emphasis supplied)

In accordance with the aforequoted definition, it has been held since the original enactment of the Contractors' Licensing Board Law in 1939, that persons engaged as painters or interior decorators, **plumbers**, installers of air-conditioning equipment and sellers of prefabricated structures, all come within the definition stated. See Attorney General Opinions No. 1939-40, page 93, No. 4726, No. 5097, No. 5226 and No. 5653.

In 1949, however, there was created by the Legislature an act providing for the Plumbing Administrative Board, and further providing that such Board have authority to conduct examinations and license master and journeymen plumbers, and for inspectors and a standard of work and material in all phases of the plumbing trade. The initial enactment was amended in 1957, and looking specifically to the definitions and jurisdictions stated, we find at § 67-22-1 (f), N.M.S.A., 1953 Compilation, 1957 Pocket Supplement:

'The word 'plumbing' shall mean the installing, altering and repairing of all plumbing fixtures, fixture traps, and soil, waste, supply and vent pipes with their devices, appurtenances and connections, through which water, waste, sewage, oil and air are carried within or adjacent to the building or other structures in or upon premises of the consumers. (Emphasis supplied)

In § 67-22-2, the law provides in part:

"The provisions of this act shall apply to **all installations, alterations and repairs of 'plumbing' or 'fixtures' as herein defined**, and to the installation, alteration and repair of consumers gas piping and the installation of gas appliances, within or on public or private buildings, structures, or premises, . . ." (Emphasis supplied)

With reference to the sections quoted, we find that the Plumbing Administrative Board was created subsequent to the earlier Constructors' Licensing Board, and in its creation was given certain authority and jurisdiction which initially had rested with the contractors.

Prior to 1949, jurisdiction over examining and licensing plumbers and plumbing contractors was found in the general language underlined in § 67-16-3, supra, Attorney General Opinion No. 4726. The Plumbing Board Act of 1949, however, by use of specific language, defined an area of jurisdiction and repealed, by implication, the jurisdiction and control formerly held by the Contractors' License Board over the plumbing trade.

Specifically, the act creating the Plumbing Administrative Board spelled out pointedly, as underlined in §§ 67-22-1 (f) and 67-22-2, supra, the specific jobs and installations covered and further indicated the fields exempt from said Board control. Attorney General Opinion No. 6470.

It is well appreciated that repeals by implication are not favored, however, it is also a generally accepted rule of statutory construction, as presented in 50 Am. Jur., § 563, that:

"It is well settled that a special or specific law repeals an earlier general or broad law to the extent of any irreconcilable conflict between their provisions. The special or specific statute circumscribes the effect of the prior general or broad act from which it differs, and operates to engraft thereon **an exception** to the extent of the conflict. **Hence, a statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter, supersedes a general statute which does not refer to that subject, although broad enough to cover it.**" (Emphasis supplied)

Recalling the question instantly considered, we must now determine whether the language of the existing Plumbers Code covers the situation presented.

Section 67-22-1 (f) and 67-22-2, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, supra, provide, in effect, that the act shall apply to **all** plumbing installations or alterations, as defined, in or upon the premises of the consumers. In defining the word "premises" in this regard, it has been held to mean lands and tenement or land with its appurtenances. **Appeal of Hilton**, 9 A. 342, 116 Pa. 351; **City of Newark v. Lippmen**, Cr. Ct., 177 A. 556, 13 N.J.Misc. 248. Thus, it may be concluded that the Legislature intended that the Plumbers Administrative Board should have jurisdiction over the buildings and lots of consumers making use of plumbing facilities.

In view of implied intent of Legislature discussed, and the manifest area of jurisdiction found in the existing Plumbing Code, it is our opinion that a contractor licensed by the Contractors' License Board, as indicated above, may not lay or construct sewer lines within three feet of a residence or other type building.