

Opinion No. 59-14

February 18, 1959

BY: FRANK B. ZINN, Attorney General

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

The exemptions provided from the requirements of the New Mexico State Plumbing Code are limited to those specified.

OPINION

{*19} This is written in reply to your recent request for an opinion on the following question:

What persons, firms, partnerships or corporations, if any, are exempt from meeting the requirements of the State Plumbing Code?

In reply to your inquiry, it is my {*20} opinion that only those persons, partnerships and corporations specifically excepted by the provisions of the code are to be classified as exempt. These include public service corporations, municipal gas and water departments, railroad, pipeline, mining, gas and oil companies, and farm and ranch irrigation systems. Also excluded are minor repair work and installations of temporary fixtures.

This opinion is based upon the following analysis of understood facts and applicable law. The basis of your inquiry seems to arise, from the factual standpoint, out of and in connection with the establishment of logging villages or camps and the building of rental dwellings and trailer parks. It becomes apparent from your discussions that there are numerous instances when plumbing and gas fitting installations have been carried out by persons not licensed by the State Plumbing Board and who may or may not be the owners of the concerned premises and, further, that such work is being done with little or no attention given the standards of materials provided for by law.

Generally speaking, Article 22, Chapter 67, N.M.S.A., 1953 Compilation, provides for the creation of a Plumbing Administrative Board; for the licensing of qualified persons engaged in the plumbing trade; requires that permits be acquired by property owners desiring plumbing work to be done and, further, provides for a minimum standard of materials which must be used and, finally, for inspections of installations by duly appointed representatives of the State Plumbing Board.

More specifically, Section 67-22-8, N.M.S.A., 1953 Compilation (pp), requires that:

"No person, firm, partnership or corporation shall engage in the business of superintending, planning and practical installation of plumbing or in plumbing contracting unless such person or a member or agent of such firm, partnership or corporation shall have received a master plumber's license from the board.

No person, firm, partnership or corporation shall engage in the business of superintending, planning and practical installation of gas fitting or in gas fitting contracting unless such person or a member or agent of such firm, partnership or corporation shall have received a master gas fitter's license from the board.

No person shall engage in the occupation of journeyman plumber or journeyman gas fitter unless such person has been granted a license by the board as such."

Section 67-22-11, N.M.S.A., 1953 Compilation (pp), requires that before any work is begun, except in the case of minor repairs or installation of temporary fixtures, an application must be made ". . . to the inspector in whose jurisdiction such work is to be performed . . ." for a permit. And by Section 67-22-10, N.M.S.A., 1953 Compilation (pp):

". . . all fixtures, materials, consumers' gas piping, appliances and materials installed in the course of plumbing or gas fitting shall be in conformity with the statutes of the state of New Mexico and the orders, rules and regulations issued by the board providing standards for the protection of life, health, welfare and property."

The Plumbing Code finally require, by Section 67-22-13, N.M.S.A., 1953 Compilation (pp), that all work or installations will be inspected.

The exceptions or exemptions from the requirements of the Plumbing Code just discussed, are found in the following statutes.

Section 67-22-2, N.M.S.A., 1953 Compilation (pp), specifically provides that:

{*21} "(a) The provisions of this act shall not apply to the installation, alteration or repair of plumbing or fixtures or gas piping up to and including the meters where such work is performed by or is an integral part of the system owned or operated by a public service corporation or the water, or gas department of any city in this state, in rendering its duly authorized service as such.

(b) The provisions of this act shall not apply to the installation, alteration or repair of plumbing or fixtures or gas piping, where such work is an integral part of the system owned or operated, in rendering its duly authorized service as such, by railroad company, pipeline company, mining company, gas company or oil company, or where such work is an integral part of any irrigation system on farms, ranches, or other open, unpopulated areas where such work will not be located within thirty (30) feet of any dwelling or any building devoted to animal husbandry.

(c) The provisions of this act shall not prohibit an individual from installing, altering or repairing plumbing or plumbing fixtures in a single family dwelling owned and occupied by him, or require a license from an individual doing such work on such premises; Provided however, all such work must be done in conformity with all other provisions of this act and the orders, rules and regulations of the board.

(d) The provisions of this act shall not prohibit an individual from installing, altering or repairing plumbing or plumbing fixtures in a farm or ranch building owned or occupied by him, or require a license from an individual doing such work on such premises."

Thus, with reference to all of the provisions of law excepting compliance with the requirements of the Plumbing Code, I find that minor repairs and temporary fixture installations, the installations of public service corporations, municipal water and gas departments, systems owned and operated by railroad, pipe line, mining, gas and oil companies, and irrigation systems on farms and ranches are exempt. Also, a person may make plumbing repairs to his own dwelling so long as he follows the standards provided by the code. No other exceptions or exemptions are found.

My opinion is founded further in an expression of the law as stated in 50 Am. Jur. 455:

". . . where express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. In such case, the inference is a strong one that no other exceptions were intended, and the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted, and excludes all other exceptions or the enlargement of exceptions made. Under this principle, where a general rule has been established by a statute with exceptions, the courts will not curtail the former, nor add to the latter, by implication. In this respect, it has been declared that the courts will not enter the legislative field and add to exceptions prescribed by statute."

Hilton A. Dickson, Jr.

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