Opinion No. 61-15

February 6, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Sam J. Jackson, Chief Inspector, State Plumbing Administrative, Board, 1930 San Mateo, N. E., Albuquerque, New Mexico

QUESTION

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1. After the State Plumbing Administrative Board has issued a permit to a contractor to install plumbing in a public school located within a municipality, may the municipality refuse to permit the contractor to make a connection to the municipal water and sewer system?

CONCLUSION

1. Yes.

OPINION

ANALYSIS

In Attorney General's Opinion No. 60-62, April 1, 1960, we said that a municipal inspector cannot collect a fee for issuing a permit or for the inspection of plumbing work done in a public school within the municipality. The basis of the opinion was that the last sentence of Section 67-22-13, N.M.S.A., 1953 Compilation, prohibited such fees being collected from "the State of New Mexico, its agencies, Boards, Commissions, institutions or other political subdivisions."

Our opinion did not indicate into which of these categories a public school falls, or, rather, school districts, since the fee in such cases would be collected from the municipal school district having jurisdiction of the school. We believe the intention of Section 67-22-13, supra, was to prohibit the payment of state funds for municipal inspection or permit fees in areas where the plumbing administrative act applies, and we further believe that school districts come within the phrase "other political subdivisions". We have previously held that school districts are political subdivisions for purposes of social security coverage. See Attorney General's Opinion No. 6072, January 10, 1955. Moreover, the case of **WATER SUPPLY COMPANY** v. **ALBUQUERQUE,** 9 N.M. 441 (1898) supports the contention that school districts are political subdivisions of the state, describing them as follows:

"A school district is a governmental auxiliary of the state, and the state incorporates it that it may more effectually discharge its appointed duties; they are termed involuntary political divisions of the state or territory, created by general laws to aid in the administration of government in carrying out the universal public school system."

On the basis of these authorities we adhere to Opinion No. 60-62, supra, and hold that a municipal inspector cannot collect a permit or inspection fee for plumbing work done in public schools.

Granting that municipal inspectors may not charge the fee in question, you now ask whether the municipality may refuse to permit the public school plumbing to be connected to the water and sewer system of the municipality.

We are faced at the outset with the fact that the plumbing administrative act does not control the question of connections to municipal water and sewer systems. The definition of "plumbing" in Section 67-22-1 (F), N.M.S.A., 1953 Comp. shows that it is only applicable to work done on the premises of the customer. And, Section 67-22-2 (a), N.M.S.A., 1953, Comp. specifically provides that the plumbing administrative act does not apply to plumbing work where such work is performed by, or is an integral part of, a system owned or operated by a public service corporation or the water department of a city. In Attorney General's Opinion No. 6470, June 15, 1956, this language appears:

"We are therefore of the opinion that the actual connection of the sewer system to the main sewer would not be the concern of the State Plumbing Board . . . . the authority to construct a sewer necessarily carries with it the power to make reasonable regulations for tapping or connecting with such sewer."

"We conclude that the actual tapping of the main sewer system is subject to the control of the municipality and it is the obligation of the municipality to determine who shall connect to such sewer line."

This reasoning is supported by statutory authority. Sections 14-40-26 and 14-40-39, N.M.S.A., 1953 Comp. vest absolute authority in the municipality to make all needful ordinances, rules, and regulations for protecting and maintaining water and sewer systems, including the making of proper sewer connections, and supervising and inspecting those connections. It is obvious that compliance with the plumbing administrative act does not automatically authorize connection to a municipal water or sewer system. It is equally obvious that plumbing in public schools located in a municipality must be in conformity with the municipal plumbing ordinance or code before it may be connected to the municipal water or sewer system. Municipalities indisputably have the power to adopt their own plumbing codes and these codes do not have to be identical with the state code on the same subject. See Section 14-25-8, N.M.S.A., 1953 Comp. In addition, municipalities are given the right and authority to enforce the state plumbing administrative act. See Section 67-22-15, N.M.S.A., 1953 Comp. Furthermore, Section 67-22-13, N.M.S.A., 1953 Comp. provides that a certificate of approval of plumbing work shall be issued after the inspector having jurisdiction finds the work or

installation to be in compliance with the orders, rules and regulations of the Board, **and all ordinances** applying to the work. These authorities lead us to conclude that a municipality may refuse to permit plumbing in a public school to be connected to the municipal water or sewer systems unless the municipal plumbing code or ordinance has been complied with.

Compliance can be determined by an inspection conducted by the municipal inspector. Municipal inspectors have the authority to inspect plumbing installed in public schools, even though they may not collect a fee for such inspection. If the inspector does not conduct an inspection, or if no inspector has been appointed in the area to be inspected, the connection to the municipal water or sewer system can be made under Section 67-22-14, N.M.S.A., 1953 Comp., and utility service may be commenced without an inspection.

Finally, we wish to observe that municipalities can only refuse to permit a connection for a reason within their jurisdiction. Thus, the connection could not be refused solely because municipal inspectors cannot charge a fee from public schools, for that is a matter regulated by state law. But if the municipal plumbing ordinance or code has not been complied with, or if the connection would damage or destroy the municipal water or sewer system, or would contaminate the municipal water supply, or for other like reasons, then the municipality can refuse to permit public school plumbing to be connected to the municipal water or sewer systems, even though the plumbing work was authorized by a permit issued by the State Plumbing Administrative Board.