

Opinion No. 66-81

June 28, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Mr. Fred Gerber, Chief Inspector, Plumbing Administrative Board, P. O. Box 3307 -
Station D, Albuquerque, New Mexico

QUESTION

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1. Is a plumbing contractor validly licensed by the Plumbing Administrative Board also required to possess an additional license issued by the Contractors' License Board before he may lawfully carry on his plumbing-contracting business?
2. Does the Plumbing Administrative Board have authority to license applicants desiring to engage in the installation, alteration or repair of septic tanks, lawn sprinkler systems, fire-protection sprinkler systems and water softening or conditioning equipment?
3. Does the Contractors' License Board have the authority to license the type of contracting work set forth in question 2 above?
4. May a contractor lawfully engage in any of the work described above, if he has only one license issued by either of the two Boards?
5. Should the Plumbing Administrative Board and the Contractors' License Board provide for a uniform examination, and as much of identical qualifications of the applicants as is possible, in order to prevent bargain hunting on the part of applicants, and to insure as much as possible the protection of the public from faulty and dangerous construction?
6. When a license to engage in any of this work is issued which Board has the responsibility for the administration and enforcement connected with said license?

CONCLUSIONS

1. No, unless he does contracting work which is not under the jurisdiction of the Plumbing Administrative Board.
2. Yes.
3. Yes.

4. Yes.
5. Yes.
6. The board which issues the license has such responsibility.

OPINION

{*106} ANALYSIS

This is the second opinion rendered by the Attorney General, at the joint request of the trade licensing boards, to resolve the problem concerning dual licensing in areas where two boards have the authority to license the same type of job. The first opinion, No. 66-72, decided this conflict could be substantially resolved in view of the 1966 amendment to Section 67-16-3 of the Contractors' License Law, N.M.S.A., 1953 Compilation. A copy of such opinion is attached hereto, incorporated herewith and made an express part of this analysis.

By reason of the above cited amendment interpreted in Opinion No. 66-72, the answer to your first question is in the affirmative. The Plumbing Administrative Board is specifically exempt from the provisions of the Contractors' License Law in areas of work which can be validly licensed by your Board.

Turning now to the question of "septic tanks" we find that your Board has the statutory authority to license businesses engaging in the installation, alteration or repair of same. **The National Plumbing Code** which as we understand is a primary standard in the industry with respect to minimum requirements for plumbing defines a septic tanks as follows:

"A septic tank is a watertight receptacle which receives the discharge of a drainage system or part thereof, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of an open-joint or perforated piping, or disposal pit." (**National Plumbing Code**, 1955, American Society of Mechanical Engineers.)

Your **Plumbing Code**, 1964 Edition, which has the force and effect of law {*}107} having been adopted pursuant to Section 67-22-10, N.M.S.A., 1953 Compilation, contains the identical definition of a septic tank, appearing on page 27 therein. A reading of the above discloses that a septic tank is a part of a "system of sewage disposal."

"Plumbing" as defined under Section 67-22-1 (F) of your law includes the installing, altering and repairing of "plumbing fixtures." A "system of sewage disposal" is expressly included within the definition of "fixtures" Section 67-22-1 (g), supra. Thus, the Board may license the installation of septic tanks. However, please be advised that we do not interpret the word "installation" as meaning "construction." To install, means to: "set up or fix as a lighting system for use or service; to establish in a place." **Webster's New**

Collegiate Dictionary, Second Edition, 1959. In view of this plain meaning of the word, we express grave doubts as to whether your Board has the authority to license the actual construction of a septic tank. Your authority would appear to extend to the evacuation, piping and setting up of factory-built prefabricated septic tanks only.

We also find ample statutory authority in the Plumbing Law for the licensing of those businesses wishing to engage in the installation, alteration or repair of sprinkler systems, regardless of type. Again, for our answer, we look to the statutory definition of "plumbing" set forth in its entirety as follows:

"67-22-1. Definitions. -- F. 'Plumbing' means 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** when done within twenty-five [25] feet of the building or structure to be served by the plumbing, or within the property line of the consumer, whichever is closer to the building or structure to be served by the plumbing. The distance from the property line to the building or structure to be served by the plumbing shall be measured from the point where the property line is to be crossed by the plumbing. This subsection shall not be construed as prohibiting the performance of plumbing beyond twenty-five [25] feet from the building or structure to be served by the plumbing." (Emphasis supplied.)

Webster, supra, defines a sprinkler system as: "a system for protection against fire in which pipes are distributed for conveying water or other extinguishing fluid to outlets for fire extinguishment; a device for spraying fence and lawn." (Webster 3rd New International Dictionary.) This definition falls under the broad general category of "plumbing" as defined above. Thus, both lawn and fire protection sprinkler systems may be licensed by the Plumbing Administrative Board. The licensing of "water conditioning contractors" is expressly authorized under the Plumbing Administrative Law, under paragraph (L) of Section 67-22-1, supra, which is set forth as follows:

"L. 'Water conditioning contractor' means any person who holds a specialty license under the provisions of this act as 'water conditioning contractor' and who regularly engages in the installation, maintenance and repair of water conditioners."

Going now to your third question we see that the above three categories are also licensed by the Contractors' License Board under PLUMBING appearing on page 12 of the Contractors' Rules and Regulations published August 20, 1965. We believe such regulations to be valid and drawn pursuant to the Contractors' License Law Section 67-16-1 through Section 67-16-21 N.M.S.A., 1953 Compilation as amended. Such classifications are included within the statutory definition of the word "contractor" appearing under Section 67-16-2, supra, set forth as follows in its entirety:

" **Contractor defined.** -- A. A contractor within the meaning of the Contractors' License Law [67-16-1 to 67-16-21] is a person, firm, copartnership, corporation, association or other organization, or any combination thereof, who, {**108*} for either a price, fee,

percentage, or any 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, water well, or other structure, project, development or improvement, or any part thereof.**

B. The term contractor shall include subcontractor, but shall not include any person 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.

C. Nothing herein shall be construed to apply to a public utility in the construction, reconstruction, operation or maintenance of its plant other than construction of buildings, or to apply to the drilling, testing, abandoning or operation of any petroleum or gas well, or to geophysical or similar exploration for oil or gas.

D. No railroad company shall be construed to be a contractor." (Emphasis supplied.)

Furthermore, your attention is invited to the recent important New Mexico Supreme Court decision in this area of the law, **Martinez v. Research Park Inc.**, 75 N.M. 672, 410 P. 2d 200, 206 (1965). As we pointed out in the enclosed opinion (66-72), this decision interpreted "contractor" set forth above as including "electrical contractor." Under the theory and principals announced in this decision, it is plain that a "plumbing contractor" would also fall under the category of contractor as it is defined above under the Contractors' License Law. In any event, there appears to be substantial authority for the Contractors' License Board to license the categories in question.

However, "dual licensing" in areas of "dual jurisdiction" existing between the two boards is no longer required by virtue of the exemption appearing in the 1966 Amendment to the Contractors' Law. (See amended section 67-16-3 and interpretation in enclosed opinion No. 66-72.) Under the principles announced in said opinion we hold that a plumbing contractor holding a license to install, alter or repair septic tanks, sprinkler systems, and water softening or conditioning equipment from the Plumbing Administrative Board may lawfully engage in such tasks without possessing an additional license as required by the Contractors' License Board. Likewise, a business holding a license from the Contractors' License Board to do the same type of work is not required to possess an additional license from the Plumbing Board.

Thus, from the analysis above it is observed that the frequent inequitable circumstances resulting from dual licensing in joint jurisdictional areas between the two boards was eliminated, substantially at least, by the 1966 Legislation. A contractor need only have one license to do any of the work in question here. This does not mean, however, that such contractor may shop around, so to speak, for the "easiest" license. We believe it is incumbent upon the Boards to require and conduct a uniform examination with regard to the technical qualifications and skill of the applicants. Such must be done in order to fulfill the manifest object of the legislation which is to protect the public from unqualified contractors, **Martinez v. Research Park, Inc.**, supra. To do otherwise would violate a cardinal principle of law and cast an absurd intent upon the actions of the 1966

Legislature, with respect to this problem. We are aware, of course, of the other dissimilarities in the licensing laws. However, such differences as to inspection, permits, and fees are reasonable and valid differences. For anyone of the above, a contractor might lawfully desire to be licensed by one board rather than the other, depending upon the type and extent of the business he conducts. We also call attention to what we believe is an obvious conclusion. The board licensing the particular business must bear the responsibility for the issuance of such license. This does not mean, however, that one board cannot or should not request the assistance of the other when needed. The public should be informed that any complaints arising over the particular work performed should be directed { *109 } to and taken care of by the board which issues the license.

Finally, this office advises that it declines to pass on your remaining three questions for the reason that inadequate information has been furnished. By a separate letter enclosed with this opinion we are requesting the additional facts needed before the questions relating to the jurisdiction of the Plumbing Board over the installation, alteration and repair of mechanical equipment for swimming pools, heating and air conditioning systems, may be fairly answered. If such information is received the answers thereto will be forthcoming under a supplemental opinion written pursuant to the guidelines and principles set forth in the above analysis.