

## Opinion No. 41-3828

July 3, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. J. B. Luchini Engineer, Electrical Administrative Board Box 921 Santa Fe, New Mexico

{\*73} In your letter of June 30 you inquire whether municipalities have authority to maintain their own electrical inspectors in view of the changes made by the 1941 Legislature to Chapter 192 of the Session Laws of 1939; and you inquire also as to the Board's duty in respect to inspection of REA electrical work.

Prior to the adoption of Chapter 192 of the Laws of 1939, the right of municipal inspection was unquestioned; and it was evident from the terms of said Chapter 192 that the state did not intend wholly to supercede the authority theretofore exercised by the municipalities in that respect.

On the contrary, after providing for electrical permits and inspection the Act gave them additional power under the Act itself by stating in Section 10 that "any incorporated municipality in this state may provide by charter provisions or by ordinance for the inspection of electrical wiring, within the corporate limits". Because of this Section 10, some doubt existed in cases where the municipal inspection was unsatisfactory whether the State Board could provide exclusive inspection by its own inspectors and charge a fee therefor as provided in Section 11 of the Act.

The Legislature of 1941 came along and resolved that doubt by repealing Section 10, and by amending other sections so as to give the Board state-wide jurisdiction, thereby making it clear that it did not intend the municipalities to administer independently any of the inspection provisions of the Act. Consequently, the provision in Section 11 to the effect that "any incorporated municipality {\*74} which has provided for electrical inspection in accordance with the provisions of this Act may establish a schedule of fees", becomes ineffective, since the power to so provide for inspection in accordance with the provisions of the Act was withdrawn with the repeal of Section 10.

Whether all right of inspection was thereby withdrawn from the municipality is hard to determine. Opinion No. 3308 of this office would seem to indicate that. My opinion is to the contrary, however. Independently of the statute the municipalities, as separate governmental entities, have, under the police power, the right to make their own inspection and to charge a fee therefor, unless that right is clearly taken away by Act of the Legislature. Here other sections of the statute recognizing the existence of municipal inspectors were left intact. For example, Section 6 gives the Board the right to employ a city inspector if satisfactory to them as a part-time deputy state inspector. I find nothing in the statute which clearly indicates an intent to withdraw completely from the cities their own right of inspection.

It is, therefore, my opinion (a) that the State Board has authority to provide its full time inspector in a municipality and to fix a schedule of fees therefor; (b) that the municipality may in addition thereto provide its own inspector and collect its own fees therefor; and (c) that if the State Board is satisfied with the municipal inspection, it need not provide state inspection and it need not collect permit fees under the statute in such municipality. It will thus appear that, in my opinion, either may provide for inspection regardless of the fact that the other is doing so; that either may leave the entire field to the other; or, since the greater includes the lesser, that arrangements may be made for a cooperative single inspection with a single fee to be divided by the State Board and the municipality in proportion to the amount of work furnished by each.

All that is said in this opinion is limited to the matter of inspection and inspection fees. Examination and licenses for electrical contractors, journeymen, and inspectors, and the fees therefor, are in the sole administration of the State Board, and the Board is solely responsible for them.

As to the REA electrical work, no exemption was made with respect to work done for the REA or rural electric cooperatives, even though they furnish their own inspection, and therefore they come within your jurisdiction, and all electrical work done for them is subject to your inspection and to the provisions of the state law with respect thereto.

By A. M. FERNANDEZ,

Asst. Atty. General