

## Opinion No. 43-4301

May 27, 1943

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

**TO:** Mr. N. V. Tanner, Associate Engineer, Division of Sanitary Engineering and Sanitation, Department of Public Health, Santa Fe, New Mexico

We are in receipt of your letter of May 24, 1943, in which you ask various questions concerning the ventilation and heating regulations promulgated by the New Mexico Board of Public Health. These regulations were adopted pursuant to Chapter 167 of the Laws of 1939, being Section 71-113 of the 1941 Compilation, which provides, in part, that:

"The State Board of Public Health \* \* \* shall have power of regulation insofar as the public health is concerned, of \* \* \* heating, ventilation and sanitation of public buildings \* . . . \*, hotels, apartment houses, tourist camps or tourist courts, restaurants, lodging houses, \* \* \* or any other place or building, public or private, which caters to the public or holds itself out as a place where rooming or heating accommodations are available for hire or pay."

The regulations, insofar as pertinent, provides that:

"These regulations shall apply \* \* \* **tourist courts, tourist camps, hotels and lodging houses** or other similar establishments offering **sleeping room accommodations** to the public for hire."

In the light of these regulations you cite various situations, which are as follows:

1. The owner of a hotel with 100 rooms leases or rents 50 rooms out of the 100 in the hotel on a more or less permanent basis to more or less permanent tenants.
2. A man operating a camp or court installation of 20 cabins, leases 16 of them on a fairly permanent basis.
3. A man owns an apartment house, 16 apartments in one building.

In the light of these situations you ask our opinion whether the owner of these various buildings comes within the scope of the regulations, and also whether the fact that rooms are rented on a weekly or monthly basis eliminate them from the enforcement of the heating and ventilation rules.

"A hotel is a building held out to the public as a place where all transient persons who come will be received and entertained as guests for compensation. Appeal of Wellsboro Hotel 336 Pa. 171, 7 Atl. 2d, 334.

"A lodging house is defined as a house containing furnished apartments which are let out by the week or by the month without meals or with breakfast simply. (Cromwell v. Stevens 2 Daly 15, 3 Abb. Prac. 26.) It is distinguished from a hotel in that a hotel keeper caters to the traveling public, the transients, the travelers who, in passing through the country stop from day to day in pursuit of their travels, while the lodging house keeper takes care of more or less permanent customers who remain for long periods, more or less permanent. . (McIntosh v. Schops, 32 Ore. 307, 180 Pac. 593.) It is distinguished from an apartment, since a lodging house is under the direct control and supervision of the owners, rooms are furnished and attended by them, or their servants; they retain the keys thereto, and this is so, even though the rooms are let by the week or month, while apartment houses are generally understood as those houses which contain apartments to which is attached a kitchen wherein it is contemplated that the family shall do its own cooking. (Fox v. Windemere Hotel Apartment Co., 30 Cal. App. 162, 157, Pac. 820, and Waitt Construction Co. v. Chase, 188 N. Y. S., 589.)"

Taking up the situations outlined above, in the light of these definitions, first, as to the hotel in which 50 rooms are let out on a more or less permanent basis. it is the opinion of the writer that the situation would come under either the definition of a hotel or lodging house and so comes within the scope of the rules, so that it is not necessary to determine whether it is a hotel or lodging house.

As to the cabins, unless they were set up as separate dwellings for separate families in which they had absolute control and did their own cooking, they would be lodging houses and not apartments, so that they would come within the regulations.

As to the third situation, it is noted that nowhere in the regulations is the word "apartment" used, and the definition of apartment is such that it is not synonymous with any of the other terms used, nor could it come within the term "similar establishments", since those are limited to sleeping room accommodations.

To summarize, it is my opinion that in any situation where rooms are let for hire the owner of such rooms comes within the regulations unless several rooms are let together, where a family takes up its abode, does its cooking and has absolute control of the premises, and where the owner does not furnish entertainment, meals or entertainment facilities. The fact that such rooms are let on a permanent basis would not take such rooms out of the regulations, since the only effect would be to turn such premises from hotels or tourist camps into lodging houses.

Your attention is called to the fact that the State Board of Public Health has full authority to extend the regulations to apartment houses, since these are mentioned in the above quoted act.

By ROBERT W. WARD,

Asst. Atty General