



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

August 9, 1947

Hon. Jack Ross  
Criminal District Attorney  
Hidalgo County  
Edinburg, Texas

Opinion No. V-333

Re: Construction of Senate Bill No. 188, Acts of the 50th Legislature, as to those persons, firms or corporations engaged in the business of contracting to do plumbing and plumbing work when the actual work is done under the supervision and control of a plumber licensed under the provisions thereof.

Dear Sir:

Your request for an opinion upon the above titled subject matter is as follows:

"I should like to secure from you an opinion as to whether or not Section 10 of Senate Bill 188 as passed by the Fiftieth Legislature would extend and apply to 'an employing plumber', who has a license under the city ordinances of the City of McAllen and several other towns in Hidalgo County, Texas.

"By the ordinances of the City of McAllen and several other towns in this county, a person is permitted to secure an employing plumber's license and carry on a plumbing business by contracting to do plumbing and hiring journeyman plumbers to do the actual work. There are a number of businesses of this type operating at present under a license from the City of McAllen and other cities in Hidalgo County and they have considerable sums of money invested in

their businesses and have been carrying on under the license and ordinances of the various cities for a number of years. . . ."

The present statutes regulating the business of plumbing and the issuance of licenses to master, employing, and journeyman plumbers, and inspections of plumbing, are Articles 1076, 1077, 1078, 1079, 1080 and 1081, Revised Civil Statutes. Articles 1078, 1079, 1080 and 1081 were repealed by this Act, and will become ineffective September 5, 1947, the effective date of Senate Bill No. 188.

Article 1078 directs all cities, to which the above mentioned statutes are applicable, to create a Board for the Examination of Plumbers. Article 1079 authorizes such Boards to issue licenses in their respective cities to master plumbers, employing, and journeyman plumbers, and inspectors of plumbing. The terms "master plumber", "employing plumber" and "journeyman plumber" are not defined by the above mentioned statutes.

Our investigation of some city ordinances reveals that they are not uniform in their definition of these terms, especially the term "employing plumber."

We infer from your letter that the City of McAllen, a city of more than 5,000 inhabitants, and other cities referred to by you and to which the present statutes are applicable, have enacted ordinances in which they have defined the term "employing plumber" to include persons, firms and corporations engaged in "and carrying on a plumbing business by contracting to do plumbing and hiring licensed journeyman plumbers to do the actual work."

Senate Bill No. 188 is a comprehensive Act. In its provisions must be found the answer to your question for, after its effective date, no city to which it applies will have authority to issue plumbers' licenses or plumbing inspectors' licenses. Such may be issued only by the Texas State Board of Plumbing Examiners. Licenses issued by that Board will be valid in all cities of Texas in which such licenses are required by this Act. Sections 2 and 3 thereof, respectively, read:

"Sec. 2. (a) The word or term 'plumbing' as used in this Act means and shall include: (1) All piping, fixtures, appurtenances and appliances for a supply of water or gas, or both, for all personal or domestic purposes in and about buildings where a person or persons live, work or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water or gas supply, or both, on the premises, or the main in the street, alley, or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal terminal holding private or domestic sewage; (2) the installation, repair and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, or both, or disposal of waste water or sewage.

"(b) A 'Master Plumber' within the meaning of this Act is a plumber having a regular place of business, who, by himself, or through a person or persons in his employ, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

"(c) A 'Journeyman Plumber' within the meaning of this Act is any person other than a master plumber who engages in or works at the actual installation, alteration, repair and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

"(d) A 'Plumber's Apprentice' within the meaning of this Act is any

person other than a master plumber or journeyman plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

"(e) A 'Plumbing Inspector' within the meaning of this Act is any person employed by a city, town or village for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, and who has successfully fulfilled the examinations and requirements of the Board.

"(f) The word or term 'Board' as used in this Act means the Texas State Board of Plumbing Examiners."

"Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

"(a) Plumbing work done by a property owner in a building owned or occupied by him as his home;

"(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

"(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the

occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances; appliance installation and service work done by anyone who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances."

Neither Section 2 nor any other section of the Act defines the terms "employing plumber" or "employing plumber's license."

Section 10, to which you refer, provides that all journeyman plumbers and master plumbers holding a license as such from any city examining and supervising board of plumbers in this State and all presently acting plumbing inspectors at the time this Act takes effect (Sept. 5, 1947) may, within 120 days from that date, procure a license as a journeyman plumber or master plumber or plumbing inspector, as the case may be, without examination, upon payment to the Board of the prescribed license fee. This section makes no mention of an employing plumber's license.

Section 13 prescribes a schedule of fees to be collected by the Board from applicants for examination, issuance, renewal and revival of licenses to master and journeyman plumbers, and plumbing inspectors, but does not mention an employing plumber's license.

Section 14 provides:

"(a) After the expiration of one hundred twenty days from the effective date of this Act, no person, whether as a master plumber, employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector, as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act.

"(b) After the expiration of one hundred twenty days from the effective date of this Act, it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby.

"(c) It shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation or plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act.

"(d) It is expressly provided that the provisions of Article 122 of the Penal Code of Texas shall apply to violations of this Act, and said Article 122 of the Penal Code and the penalties therein provided are hereby expressly referred to."

Article 122, Penal Code, as amended in 1941,  
reads:

"Any person, whether as a master plumber, employing or journeyman plumber

engaged in, working at, or conducting the business of plumbing without license as provided by law, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed One Hundred Dollars (\$100)." (Emphasis added)

The term "employing plumber" is mentioned in paragraph (a) of Sec. 14, but not elsewhere in the Act.

After a careful examination of Senate Bill No. 188, we have concluded that it does not provide for the issuance of "an employing plumber's license." Only a natural person may be issued any license authorized by it. Of course, a license cannot be issued to either a firm or corporation as such.

It is our opinion that a person, who is not a licensed plumber, and a firm, the members of which are not licensed plumbers, may engage in the business of contracting to do "plumbing" as that term is used in this Act, including installation of plumbing and plumbing work, but only when the actual work is done under the supervision and control of a plumber licensed under the Act, as provided by paragraph (c) of Section 14, and that such persons and the members of such firms so engaged are without the penal provisions of Article 122.

We are of the further opinion that a corporation, when authorized by its charter, may also legally engage in the same business and under the same restriction as imposed upon persons and firms so engaged.

#### SUMMARY

Senate Bill No. 188, 50th Legislature, does not provide for the issuance of an employing plumber's license.

A person, who is not a licensed plumber and a firm, the members of which are not licensed plumbers, may engage in the business of contracting to do "plumbing" as that term

is used in this Act, including installation of plumbing, and plumbing work, but only when the actual work is done under the supervision and control of a plumber licensed under Senate Bill No. 188, as provided by paragraph (c) of Section 14 thereof.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

*Bruce W. Bryant*

By

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Assistant

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APPROVED:

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