



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

November 10, 1947.

Hon. C. E. Belk, Administrator
Board of Plumbing Examiners
Austin, Texas

Opinion No. V-428.

Re: Whether the license fee fixed by the Plumbing License Law of 1947, S.B. 188, Acts 50th Legislature, is a license fee or an occupation tax, and related questions.

Dear Sir:

Your request for an opinion reads as follows:

"This Board has received several communications from plumbers complaining that some of the smaller cities require the payment of a prohibitive occupation tax or license fee of plumbers. Therefore, we submit the following questions for answer:

- "1. Question: In view of the provision of the constitution prohibiting a city from charging an occupation tax of more than one-half of the State occupation tax, applicable to a particular occupation, please advise us whether the license fee as fixed in the Plumbing License Law of 1947 would constitute an occupation tax under the provision of the constitution?
- "2. Question: If such fees would constitute an occupation tax under the provision of the constitution, what would be the maximum amount that could be charged by cities of the State for occupation tax or license fee of plumbers?
- "3. Question: In view of subdivision B, Section 3, of the Plumbing License Law, can

cities under 5,000 inhabitants charge an occupation tax or license fee of plumbers in excess of one-half of the State License fee?"

In your first question you ask whether the license fee provided by the Plumbing License Law of 1947, S. B. 188 is an occupation tax, coming within Section 1, Article VIII, of the Texas Constitution.

In the case of City of Fort Worth v. Gulf Refining Company, 125 Tex. 512, 83 S. W. (2d) 610, the Supreme Court distinguishes between an occupation tax and a license fee as follows:

"An occupation tax is levied primarily for the purpose of raising revenue, and unless the measure before us is primarily a revenue measure, it is not an occupation tax. . . A license law is one which confers upon those who comply therewith a right denied all others, and it is immaterial whether or not it provides a fee therefor. . . An official license may be said to be a permission granted by public authority to carry on a business or trade or perform other acts which are forbidden by law except to persons obtaining such permission. . ."

An occupation tax is thus distinguishable from a license fee or tax imposed under the police power, in that an occupation tax is primarily intended to raise revenue, while a license fee or tax is primarily intended as a means of, or aid to, regulation.

Applying this yardstick to the Plumbing License Law of 1947, we feel that there is little doubt that the primary purpose of the Act is the regulation of the plumbing trade. This is clear from the principal provisions of the Act which provide for the issuance and renewal of licenses to varying types of plumbers and plumbing inspectors and for qualifying examinations to determine the fitness of applicants. Also the exclusion of the purpose of raising revenue as the sole or as even a primary purpose of the Act is left beyond question by the provision of the Act that the license fees provided for therein shall be reduced if the funds remaining in the hands of the Board at the end of any calendar year are in excess of the expenses of the Board (See Section 7). We, therefore, advise you as to your first question that the license fees provided for in

the Plumbing License Law of 1947 are not occupation taxes, but are license fees.

Your second and third questions ask whether municipalities may charge an occupation tax or license fee of plumbers, and if so, in what amount.

We quote Section 1, Article VIII, of the Texas Constitution, on the question of whether a municipality may levy an occupation tax on plumbers:

". . . It (The Legislature) may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State . . . except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; . . . and provided further that the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business." (Parenthetical addition ours).

In the light of the foregoing constitutional provision, a municipality may not levy an occupation tax on plumbers for two reasons:

First, because plumbing is a mechanical pursuit and as such is not subject to an occupation tax. *Western Company v. Sheppard*, 181 S. W. (2d) 850, error refused.

Second, because a municipality may not tax an occupation which is not taxed by the Legislature for the benefit of the State. *Hoefling v. City of San Antonio*, 20 S. W. 85; *Ex Parte Stevenson*, 169 S. W. (2d) 175; 27 Tex. Jur. 901, Section 54.

This answers your second and third questions with respect to the levying of an occupation tax.

As to whether municipalities may charge a license fee of plumbers, we interpret the statute as establishing the Texas State Board of Plumbing Examiners as the sole licensing agency for plumbers, from and after the effective date of the statute, to the exclusion of all municipalities.

This interpretation follows from the provisions of the Plumbing License Law of 1947 repealing the previous statutory authority for municipal licensing of plumbers (Arts. 1078, 1079, 1080, and 1081, R. C. S.), from the provisions throughout the Act establishing a uniform State licensing system to be initiated and administered by the Texas State Board of Plumbing Examiners, and from the provisions of the Act to the effect that no city or town shall prescribe any ordinance, by-law, rule or regulation inconsistent with the Act.

In this holding, we follow Opinion No. V-333 of this department, a copy of which opinion we enclose herewith.

SUMMARY

The license fee provided for in the Plumbing License Law of 1947, S. B. 188, is not an occupation tax. *City of Fort Worth v. Gulf Refining Co.*, 83 S. W. (2d) 610.

Municipalities may not levy an occupation tax on the plumbing trade. Sec. 1, Art. VIII, Texas Constitution; *Hoefling v. City of San Antonio*, 20 S. W. 85; *Ex Parte Stevenson*, 169 S. W. (2d) 175; *Western Co. v. Sheppard*, 181 S. W. (2d) 850.

The Texas State Board of Plumbing Examiners is the exclusive licensing agency for plumbers, and municipalities are precluded from issuing licenses to plumbers after the effective date of the Plumbing License Law.

Yours very truly

APPROVED:

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