



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

April 27, 1995

Mr. Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711-1215

Letter Opinion No. 95-028

Re: **Uses of municipal registration fees  
for state licensed air conditioning and  
refrigeration contractors (ID# 26247)**

Dear Mr. Garison:

You refer to Attorney General Opinion JM-1195 (1990) which concluded that municipalities may not impose local license taxes, occupation taxes, or bond requirements on state licensed air conditioning and refrigeration contractors, but allowed for the possibility that a municipal "registration fee" might be validly imposed. You now ask whether such a municipal registration fee might be validly imposed

when that registration fee is used, in whole or in part, for any of the following purposes[:]

1. Support of the municipality's building inspection program, home improvement program, environmental or conservation program, or any other municipal program;
2. Limiting increases in permit fees for the general public;
3. Raising revenue for the municipality;
4. Enforcement of municipal ordinances dealing with compliance of building or mechanical codes;
5. Registration costs for record keeping purposes.

In our opinion, the "registration fees" at issue may only be imposed under provisions adopted by a home-rule city and then only in the presumably nominal amounts reasonably necessary to cover registration costs; and fees collected may be used only for such purposes.

Attorney General Opinion JM-1195, in disallowing municipal imposition of "license fees" and bond requirements on state licensed air conditioning and refrigeration contractors, referred to the state Air Conditioning and Refrigeration Contractor Law, V.T.C.S. art. 8861, noting, at footnote 1, that those provisions had been "meant to relieve air conditioning and refrigeration contractors from compliance with regulations varying

from jurisdiction to jurisdiction, by providing a scheme under which the obtaining of a state license would authorize such contractors to do business anywhere in the state." The opinion concluded that article 8861 on its face precluded municipal imposition of "license fees," *see* V.T.C.S. art. 8861, §§ 4 (state air conditioning and refrigeration contractor licensure), 9(a) (state licensee may not be required to hold municipal license to practice in municipality), and occupied the field of bond requirements so as to pre-empt municipal imposition of such requirements, *see id.* § 3(f) (state requirements for state licensed contractors' bonds).<sup>1</sup>

On the other hand, Attorney General Opinion JM-1195 did not find municipal imposition of a "registration fee" on state licensed air conditioning and refrigeration contractors precluded in all cases as inconsistent with Air Conditioning and Refrigeration Contractor Law, noting that section 7 of article 8861 required a state licensed contractor to notify a municipality in which he was engaged in contracting of his state licensure, the notification to be "in the form required by the municipality." The opinion stated that, while "the state's entry, in article 8861, into the field of regulation . . . would severely limit the authority of a municipality to additionally require a registration fee," determination of "the permissibility of a particular fee would depend on factual questions as to the nature of the fee." Attorney General Opinion JM-1195 did not further pursue this question. All of your questions here focus on the nature of any such registration fee that can be imposed by a municipality.

In responding to these questions, we now eliminate at the outset the possibility of the lawful charging of any such fee by a general-law municipality. A general-law city must have specific statutory authority for the imposition of any fee, and we find none here. *See e.g.* Attorney General Opinion DM-22 (1991). However, as Attorney General Opinion DM-22 noted, a home-rule municipality under article XI, section 5 of the state constitution, may, in contrast, impose a fee by charter or ordinance, so long as it not inconsistent with state law, even if the fee is not specifically authorized by state law. *See also Producers Ass'n v. City of San Antonio*, 326 S.W.2d 222 (Tex. Civ. App.--San Antonio 1959, writ ref'd n.r.e.).

As to the nature of the registration fee that might, consistently with state law, be charged by a home-rule municipality, we bear in mind that the purpose of the state Air Conditioning and Refrigeration Contractor Law was to relieve state licensed contractors from varying local restrictions on their right to practice their occupations. A home-rule municipality's predication of such right to practice on the payment of substantial fees would in our view be inconsistent with the purpose of that paramount state law. Although the statute does require a state licensee to register with a municipality where he practices and authorizes municipalities to adopt state standards by ordinance which subject violators

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<sup>1</sup>Attorney General Opinion JM-1195 (1990) disallowed municipal imposition of an "occupation tax" on the contractors in question, on the basis of article VIII, section 1, of the state constitution.

to criminal penalties, *see id.* §§ 7, 9(b), it nevertheless, in our opinion, and in the words of Attorney General Opinion JM-1195, "severely limit[s] the authority of a municipality to . . . [impose] a 'registration fee.'"

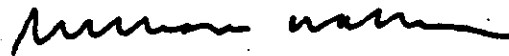
Such a "registration fee" clearly may not be in the nature of a tax, that is, for the enhancement of general revenue. *See, e.g., Reed v. City of Waco*, 223 S.W.2d 247 (Tex. Civ. App.--Waco 1949, writ ref'd). It would then amount to an occupation tax, which, for the reasons stated in Attorney General Opinion JM-1195, a municipality could not impose. Moreover, in view of the determination in Attorney General Opinion JM-1195 that municipal "license fees" would be impermissible, we do not believe that a registration fee may, by whatever name it is called, be in the nature of such a "license fee," that is, one used to defray costs of the general regulation of air conditioning and refrigeration contractors. *See id.*

In our view, the possible uses of the registration fee you ask about, except "registration costs for record keeping purposes," must all be rejected as inconsistent with the Air Conditioning and Refrigeration Contractor Law as construed in Attorney General Opinion JM-1195: all of the other possibilities you suggest involve fees either for general revenue or general regulation. Thus, we believe that a home-rule municipality may impose a registration fee on air conditioning and refrigeration contractors only in the presumably nominal amounts reasonably necessary to defray the costs of the registration required by section 7 of the Air Conditioning and Refrigeration Contractor Law. We do not address the validity of any particular fee amount.

### S U M M A R Y

A home-rule municipality may impose a registration fee on air conditioning and refrigeration contractors only in the presumably nominal amounts reasonably necessary to defray the costs of the municipal registration required by the Air Conditioning and Refrigeration Contractor Law, V.T.C.S. article 8861. A general-law municipality lacks authority to impose any such fee.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee