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Opinion No. 64-10

R-96

March 6, 1964

REQUESTED BY: THE HONORABLE ELMER T. BURSON
House of Representatives

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Is it legal for cities and towns to require a city contractor's license when certain establishments hold state contracting licenses, in specific reference to the electrical and plumbing contractors ?

ANSWER: No.

Ordinances enacted by municipalities requiring licenses of various individuals engaged in various occupations are generally for two purposes:

1. An occupation tax for revenue purposes.
2. A regulation of the occupation. The regulation may take two forms:
 - (a) A licensing of the persons engaged in the occupation by requiring the successful completion of a qualifying examination.
 - (b) A regulation of the standards of performance in said occupation: (1) requiring permits before commencement of a job; (2) conducting inspections; (3) issuing final certificates of approval when the job is completed.

The question here is whether the cities have the power to license plumbing and electrical contractors by requiring the successful completion of qualifying examinations.

As late as 1937 the power of a city to impose a license requirement upon plumbers was recognized. Indeed, the Registrar of Contractors enforced the city ordinance imposing the license requirement. Board of Examiners of Plumbers v. Marchese, 49 Ariz. 350 (1937), 66 P.2d 1035.

In 1951, the Legislature established Chapter 10 of Title 32, revising the duties of the Registrar of Contractors. He was given the power to regulate general building contracting, general engineering contracting and specialty contracting. A.R.S. §32-1102 states:

" . . .

"3. Specialty contracting. A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts including, but not limited to, construction of smelters, crushing plants, mills and other specialized structures for use in connection with the reduction of mineral-bearing ores."

The Registrar was given the specific power to:

"A.R.S. §32-1104. Powers and duties

" . . .

"6. Make rules and regulations he deems necessary to effectually carry out the provisions and intent of this chapter.

. . . "

"A.R.S. §32-1105. Rule making powers for purposes of classifying contractors.

"A. The registrar may adopt rules and regulations necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business and may limit the field and scope of operations of a licensed contractor within any of the branches of the contracting

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business, as described in this chapter, to these divisions thereof in which he is classified and qualified to engage."

The Registrar of Contractors immediately enacted various rules and regulations covering specialty contractors. Administrative Procedure Act, Title 39, Registrar of Contractors. He made 67 classifications for specialty contractors among which we find Class C-11, Electrical and Class C-37, Plumbing. Class A contractors are given the power to do any work involving specialty contractors.

The Legislature, by enacting Chapter 10, Title 32, A.R.S. superseded the Board of Examiners of Plumbers v. Marchese, supra, insofar as the court holds that city may establish examining boards for plumbing contractors.

Justice Lockwood reviewed the history of the contractor's code in Employment Security Commission of Arizona v. Fish, 92 Ariz. 140, 375 P.2d 20 (1962):

" . . . The entire Article was repealed and a new code enacted in 1951. The section on suspension and revocation of licenses was amplified, and designated more specifically the grounds therefor.

. . .

"It appears to us upon reviewing the legislative history of the evolution of the contractor's code that the legislature intended (1) to control contractors by issuance, suspension or revocation of licenses, . . . "

Several cases have drawn a distinction between the power of a city to regulate the standards of workmanship. Agnew v. Culver City, 334 P.2d 571 (1959); Collins v. Priest, 212 P.2d 269 (1949); Lynch v. City of Los Angeles, 249 P.2d 896 (1952); Lasley v. Baldwin, 324 P.2d 108 (1958); Wetterer v. Hamilton, 146 N.E. 2d 846 (Ohio). For example, in Lasley v. Baldwin, supra, it was stated that:

" . . . The state has adopted a board and comprehensive plan for licensing contractors throughout the entire state, for the examination as to their qualification and fitness to engage in their various activities and being only those who prove themselves qualified by satisfactorily passing examinations, and for punishing those who prove themselves incompetent or unfaithful to the trust reposed in them. Business and Professional Code, Div. 3, ch. 9. These are matters of general and statewide concern, and a city may not impose additional requirements in a field which is fully occupied by a state statute. *Pipoly v. Benson*, 20 Cal. 2d 366, 370, 125 P.2d 482, 147 A.L.R. 515; *Collins v. Priest*, 95 Cal. App. 2d 179, 181, 212 P.2d 269. It therefore follows that the appellant does not have the right to require the holder of a Class C-27 landscape contractor's license, to be also licensed as a master plumber as a condition precedent to constructing lawn sprinkler systems."

Annot. 22, A.L.R. 2d 816, Validity of Regulations as to Plumbing and Plumbers, supplementing Annot. 36 A.L.R. 1342 (same subject) shows quite a few states have enacted statutes regulating the licensing of specialty contractors in cities greater than a certain size in population. The smaller cities and towns are given the power to waive the requirements of the state licensing board, probably because licensed specialty contractors are not easily available in such a small town. These statutes have been upheld against the contention that the larger cities have the power to impose their own licensing requirements.

The Legislature, by enacting Chapter 10, Title 32 in 1951, preempted the section of law that regulates licensing specialty contractors. State regulation achieves uniformity. It allows an individual to pursue the calling anywhere in the state without having to pass an examination in each city. It can well be inferred that the Legislature sought to avoid the

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problems described in Claxton v. Barrowman, 266 P.2d 966 (Okla) where the Supreme Court of Oklahoma required one city to recognize the license granted by another city.

Finally, it cannot be emphasized too much that the city is left with a good number of powers that regulate the activity of plumbing and electrical contractors. The city may impose its own standards of workmanship. It may require permits to be obtained before work is begun. It may require completed work to pass inspection given by city officials. It may impose an occupational license tax. It may require a bond in conjunction with its building permit conditioned that the city building code will be complied with.

This opinion is of the same effect as that rendered by the Attorney General of Washington on November 19, 1963, AGO 63-64 No. 70, which was based upon the 1960 Washington case of Bellingham v. Schompera, 57 Wn 2d 106, 356 P.2d 292.

I am of the opinion that only the state has the power to license plumbing and electrical contractors.


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