

47 Op. Att'y Gen. No. 21

BUILDING CODES - Interpreting plumber licensing laws;
BUILDING CODES - When plumbing license required;
LICENSES, PROFESSIONAL AND OCCUPATIONAL -
Interpreting plumber licensing laws;
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When plumbing license required;
PLUMBERS, BOARD OF - Interpreting plumber licensing laws;
PLUMBERS, BOARD OF - When plumbing license required;
MONTANA CODE ANNOTATED - Sections 37-1-131, 37-69-102, -202, -301, -303, -306, -324;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 60 (1980).

HELD:

1. The Board of Plumbers has the legal authority to interpret Mont. Code Ann. Title 37, chapter 69, and any other laws or rules pertaining to the licensing of plumbers in Montana. The Board's interpretation must be given deference unless it is incorrect.

2. The Board of Plumbers' statutory authority to prevent the unlicensed practice of plumbing is limited to situations where a person works in the field of plumbing in any incorporated city, town or other area served by a public water supply or a public sewer system, or who while working in the field of plumbing connects or disconnects plumbing from a public water supply or sewer system (Mont. Code Ann. § 37-69-301), assuming that the person's work does not fit within the exceptions of Mont. Code Ann. § 37-69-102 and a waiver has not been granted pursuant to Mont. Code Ann. § 37-69-301.

December 16, 1998

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Dear Dr. Blouke:

The Department of Commerce has asked my opinion on two related questions which I have rephrased as follows:

1. Which entity, the Board of Plumbers or the Building Codes Division of the Department of Commerce, has the legal authority to interpret Mont. Code Ann. title 37, chapter 69 of the Montana Code Annotated and any other laws or rules pertaining to the licensing of plumbers in Montana?

2. Does the Board of Plumbers' statutory authority to pursue action against the unlicensed practice of plumbing extend to situations where a person works in the field of plumbing or is it limited to situations where a person works in the field of plumbing in an incorporated city, town or other area served by a public water supply or public sewer system, assuming in either instance that the person's work does not fit within the exceptions of Mont. Code Ann. § 37-69-102 and that a plumbing license is required any time a person connects or disconnects plumbing from a public water supply or sewer system?

The Montana Board of Plumbers regulates the plumbing profession and oversees the licensing of journeyman and master plumbers in the State of Montana. Mont. Code Ann. §§ 37-1-131, -302(1), 37-69-306(2). The Board of Plumbers' powers include the ability to adopt rules to implement Mont. Code Ann. title 37, chapter 69, Mont. Code Ann. § 37-69-202(1), and the duty to "set and enforce standards and rules governing the licensing . . . and conduct" of plumbers, Mont. Code Ann. § 37-1-131.

The Department of Commerce is responsible for issuing plumbing permits, Mont. Code Ann. §§ 50-60-505 to -509, and inspecting facilities "to ensure compliance with the requirements of the state plumbing code."

Mont. Code Ann. § 50-60-510. The Department of Commerce has assigned these duties to its Building Codes Division which, as part of its inspection duties, must "request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site." § 50-60-510. License violations uncovered by a Building Codes Division investigator must be reported by that investigator to the Building Codes Division, which must then report the violation to the Board of Plumbers. § 50-60-510. However, the Department of Commerce's rule-making authority with respect to plumbing licenses is limited to "setting expiration, renewal and termination dates." Mont. Code Ann. § 37-1-101(7).

From my review of the above-cited statutes, I conclude that the legal authority to interpret Mont. Code Ann. title 37, chapter 69 and any other rules and laws pertaining to the licensing of plumbers rests with the Board of Plumbers. The Board of Plumbers' interpretations are entitled to deference and are controlling, unless they are legally incorrect. Christenot v. State, 272 Mont. 396, 401, 901 P.2d 545, 548 (1995); Grouse Mountain Assoc. v. PSC, 284 Mont. 65, 943 P.2d 971 (1997).

I understand that this question regarding which entity has the legal authority to interpret plumbing licensing laws arises, at least in part, as a result of Mont. Admin. R. 8.70.304(3). That rule was adopted by the Building Codes Bureau of the Department of Commerce while the Board of Plumbers was administratively attached thereto. I have not been asked to and do not offer an opinion on whether Mont. Admin. R. 8.70.304(3) was properly promulgated. However, I do reiterate that the Board of Plumbers has the legal authority to establish and enforce laws governing the licensing of plumbers, while the Building Codes Division's inspection duties include the obligation to "request proof of licensure from any person who is required to be licensed" as a plumber. Mont. Code Ann. § 50-60-510. Thus, the Board of Plumbers and the Building Codes Division must be consistent in their interpretation of when an individual engaged in the field of plumbing must be licensed.

Regarding the second issue, the Department of Commerce asks whether the Montana Board of Plumbers' interpretation of Mont. Code Ann. §§ 37-69-301 to -324 is correct. The Board apparently interprets those statutes to require any person who engages in the "field of plumbing" to have a plumbing license, regardless where the plumbing activity occurs. The only exceptions would be for the type of plumbing installations listed in Mont. Code Ann. § 37-69-102 and when the license requirement has been properly waived pursuant to Mont. Code Ann. § 37-69-301. I cannot interpret Mont. Code Ann. §§ 37-69-301 to -324 in such a manner.

When interpreting statutes, the intent of the legislature controls. State ex rel. Neuhausen v. Nachtsheim, 253 Mont. 296, 299, 833 P.2d 201, 204 (1992). Legislative intent is determined by first examining the language of the statutes and the apparent purpose to be served by the statutes. State v. Austin, 217 Mont. 265, 268, 704 P.2d 55, 57 (1985). If the legislature's intent can be determined from the plain meaning of the words used, together with the context of the statutes, there is no need to look further. Clover Leaf Dairy v. State, 948 P.2d 1164 (1997); McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980).

Part 3 of chapter 69, title 37, Mont. Code Ann., contains the licensing provisions applicable to persons engaged in the "field of plumbing" in this state. Section 37-69-301 is the substantive statute which dictates when an individual working at the field of plumbing must be licensed as a plumber, and provides for the waiver of the licensing requirements by various entities. It states:

37-69-301. License required--temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as

hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.

According to the plain language of the first sentence of the statute, a plumbing license is required for: (1) any person who works in the field of plumbing in any incorporated city or town; (2) any person who works in the field of plumbing in any area served by a public water supply or a public sewer system; and (3) any person who while working at the field of plumbing connects plumbing to or disconnects plumbing from a public water supply or public sewer system. See 38 Op. Att'y Gen. No. 60, at 215 (Mont. 1980) (one factor for determining when a plumbing license is required is whether "the work must be accomplished 'in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state'").

The historical evolution of Mont. Code Ann. § 37-69-301 is also instructive. The predecessor to the above provision was initially adopted in 1949 as the first section of the original act which established a system of state examination for master and journeyman plumbers. It provided: "Any person working at the business of plumbing, in any incorporated city or town in this state containing more than one thousand inhabitants, either as a master plumber or as a journeyman plumber, shall first secure a state license as hereinafter provided." It is clear from this language that a person working at the business of plumbing had to obtain a state master plumber or journeyman plumber license only in the event that person worked as a plumber in an incorporated city or town. Plumbing work conducted outside the limits of an incorporated city or town did not require a plumbing license.

The original section has been amended several times since 1949. Amendments adopted in 1961 expanded the plumbing license requirement to a person who, while working at the business of plumbing, connected plumbing to or disconnected plumbing from the city or town's water or sewer system. The 1975 Legislature changed the term "business of plumbing" to "field of plumbing" and greatly expanded the license requirement by making it applicable to persons who work in the field of plumbing in any area served by a public water supply or a public sewer system, or who connect or disconnect plumbing from a public water supply or a public sewer system. Significantly, however, there has been no amendment expanding the plumbing license requirements to a person working in the field of plumbing anywhere in the state. In fact, such an amendment was defeated in committee during the 1997 legislative session.

The 1961 Legislature also amended the original law by adding the predecessor to the second sentence of Mont. Code Ann. § 37-69-301. The second sentence now allows a city or similar entity to temporarily waive the license requirements of the first sentence in the event a licensed plumber is not reasonably available and the Board of Plumbers expresses no objection. This "waiver" refers to the licensing requirements found in the first sentence of the statute and is in addition to, not instead of, those licensing requirements. The licensing requirements set forth in the first sentence control unless the exceptions contained in Mont. Code Ann. § 37-69-102 apply or a waiver is obtained.

The remaining substantive sections contained in chapter 69 of title 37, Mont. Code Ann., pertain to the use of apprentices, and the process for licensing journeyman plumbers and master plumbers in the state of Montana. See Mont. Code Ann. §§ 37-69-302, -303, and -306. They set forth the qualifications required of a journeyman plumber and a master plumber, as well as the licensing, examination and discipline process. Those statutes, while a part of the regulatory scheme applicable to plumbers generally, do not establish when a license is required of a person working in the field of plumbing. Mont. Code Ann. § 37-69-301 is the sole statute wherein that information is found.

Mont. Code Ann. § 37-69-324 imposes misdemeanor penalties for violations of the licensing provisions. It states:

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system *in violation of any provisions of this chapter* or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

(Emphasis supplied.) It is apparently the position of the Board of Plumbers that Mont. Code Ann. § 37-69-324, when read with Mont. Code Ann. § 37-69-301, imposes a penalty on any person engaged in the field of plumbing who is not licensed. Again, I cannot agree.

Penalty statutes are not self-executing. Crane v. State, 200 Mont. 280, 284, 650 P.2d 794, 797 (1982). Rather, they set forth the penalties to be imposed whenever provisions of substantive statutes are proven to have been violated. Id. Section 37-69-324 is no different. That section specifically provides that a person who works at the field of plumbing, a person who conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system is guilty of a misdemeanor *if* that person is "in violation of any provisions of this chapter." Mont. Code Ann. § 37-69-301 limits the licensing requirement to plumbing work conducted within a city, a town or an area served by a public water supply or a public sewer system, and work which connects or disconnects plumbing from a public water supply or a public sewer system, provided the work is not subject to the exclusions listed in Mont. Code Ann. § 37-69-102 and the requirement has not been waived pursuant to Mont. Code Ann. § 37-69-301.

A "public sewer system" is "any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public." A "public water supply" is "any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis." Mont. Code Ann. § 37-69-101(8), (9). Applying these definitions to Mont. Code Ann. § 37-69-301, it is apparent that any person who works in the field of plumbing on any sewer system which serves two or more dwellings or any other facility which serves the public, or any water supply which serves 10 or more families or 25 or more persons on a regular and continuous basis, must be a licensed plumber. The only exceptions are those listed in Mont. Code Ann. § 37-69-102, or when a waiver has been properly obtained pursuant to the second sentence of Mont. Code Ann. § 37-69-301. No plumbing license is required for an individual who works in the field of plumbing in other areas, including an individual who installs plumbing in a single family dwelling which has its own well and septic system, is located outside the limits of an incorporated city or town, and is not owned by the individual doing the plumbing.

THEREFORE, IT IS MY OPINION:

1. The Board of Plumbers has the legal authority to interpret Mont. Code Ann. title 37, chapter 69, and any other laws or rules pertaining to the licensing of plumbers in Montana. The Board's interpretation must be given deference unless it is incorrect.
2. The Board of Plumbers' statutory authority to prevent the unlicensed practice of plumbing is limited to situations where a person works in the field of plumbing in any incorporated city, town or other area served by a public water supply or a public sewer system, or who while working in the field of plumbing connects or disconnects plumbing from a public water supply or sewer system (Mont. Code Ann. § 37-69-301), assuming that the person's work does not fit within the exceptions of Mont. Code Ann. § 37-69-102 and a waiver has not been granted pursuant to Mont. Code Ann. § 37-69-301.

Sincerely,
JOSEPH P. MAZUREK
Attorney General

jpm/mas/dm