

Opinion No. 52-5480

January 28, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Harrison Burrall, Engineer State Plumbing Administrative Board Albuquerque, New Mexico

{*195} This is in reply to your inquiry of January 25, 1952, asking an opinion of this office with respect to the regulatory powers of the State Plumbing Administrative Board as to the installation of gas fixtures. You are particularly concerned with the power of the Board to prohibit the installation of inherently dangerous fixtures.

The State Plumbing Administrative Act, Chapter 145 Laws of 1949, is basic legislation intended to protect the public health, safety and welfare.

Section 4 of the Act states:

"The board shall issue orders prescribing the minimum standards for the installation, alteration, repair and renovation of plumbing and fixtures, which orders shall embody the requirements prescribed by The Uniform Plumbing Code as adopted by the Western Plumbing Officials Association."

Section 1 (e) of the Act states:

"The word 'fixtures' shall mean and include closet bowls, lavatories, bath tubs, showers, kitchen sinks, laundry trays and **heating stoves, furnaces and devices and cooking stoves using natural or manufactured gas**, hot water tanks, softeners, urinals, slop sinks, shower pans, drinking fountains . . ."

It is apparent from the language of the Legislature that it was their intention that the Board should prescribe, by order regulations deemed necessary for the protection of the public health, safety {*196} and welfare in regard to fixtures of all types, including "heating stoves, furnaces and devices and cooking stoves using natural or manufactured gas."

It is my opinion that should the Plumbing Administrative Board deem any particular type or design of gas heating fixtures to be inherently dangerous to the public health, safety and welfare it could, by proper order, adopt a regulation in accordance with the statutory requirements for the adoption, issuance and distribution of such orders or regulations.

I wish to point out that insofar as this type of regulation is concerned there is by statute dual authority vested in the Public Service Commission to promulgate rules and regulations with respect to protecting the public from defective gas and electrical appliances or equipment or the improper installation of equipment. This authority is

vested in the Public Service Commission by Section 36 of Chapter 84 of the Laws of 1941.

In the event that your Board does issue regulations in this regard it is suggested that it be done in cooperation with the Public Service Commission to avoid the issuance of any conflicting rules or regulations.