

Opinion No. 56-6351

January 17, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. P. Corcoran, Chief Inspector, Plumbing Administrative Board, 307 Lead Avenue, N.W., Albuquerque, New Mexico, and Mr. Frank Horan, City Attorney, City Hall, Albuquerque, New Mexico

We have your letter of January 4 in which you request an opinion from this office on the following question:

In view of § 21, Chapter 242, Laws of 1955, can the City of Albuquerque require a bond from master plumbers and gas fitters conditioned upon the faithful performance of their duties under the Act, or a bond of \$ 500.00 conditioned upon the payment of inspection fees?

Section 21, Chapter 242, Laws of 1955, reads as follows:

"Any applicant for a master plumber's license or a master gas fitter's license shall, before issuance of such license, execute and deliver or cause to be executed and delivered in his behalf or in behalf of his firm, partnership or corporation to the Secretary of State of the State of New Mexico, two good and sufficient bonds with reputable corporate surety authorized to transact business in New Mexico, or other suitable sureties to be approved by the board, the first being in the penal sum of Two Thousand Five Hundred Dollars (\$ 2,500.00), with the people of the State of New Mexico named as obligee, conditioned that applicant will perform all the duties required of him under this Act and comply with all requirements of law, and the other being in the penal sum of Five Hundred Dollars (\$ 500), with the Plumbing Administrative Board of the State of New Mexico named as obligee, conditioned for the payment of inspection fees provided for in this Act."

Prior to the 1955 Legislature, there was no State requirement, for bonds from plumbers and gas fitters. This would indicate that the Legislature had not decided to occupy this particular phase of the regulation of plumbers and gas fitters, and thus municipalities would be free under the general police powers of such municipalities to regulate and require such bonds. The 1955 Legislature, in rewriting the law regulating plumbers and gas fitters, deemed it necessary to require bonds of all licensees.

Under the well known rules of statutory construction, when a legislature deems it necessary to lawfully regulate a business, which before had been left to municipal regulation, a general legislative enactment relating to matters of statewide concern ordinarily repeals existing conflicting regulations by the municipality. See McQuillin on Municipal Corporations, Third Edition, Volume 6, §§ 21.32 and 21.34.

It is our opinion that the Legislature intended, by § 21, Chapter 242, Laws of 1955, that only the bonds therein required should be supplied by master plumbers and gas fitters. One bond in the amount of \$ 2,500.00 is for the faithful performance of all duties required by the Act. The second bond is for the payment of all inspection fees required by the Act. The bonds required by the City of Albuquerque are merely duplications of the very things required by the State Act and since the Legislature has not given the authority to the City of Albuquerque, or any other municipality, to require such bonds, we feel that this indicates the intent of the Legislature to be that such regulation should not be made by the municipality.

For the reasons herein expressed, we are of the opinion that the City of Albuquerque can no longer require bonds from master plumbers and gas fitters under a municipal ordinance.

By Paul L. Billhymer

Assistant Attorney General