

Opinion No. 57-188

July 30, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: T. M. Woodruff, Superintendent, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

QUESTIONS

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- "1. Is it necessary for the penitentiary to have a licensed plumber to install all its plumbing needs, (gas and water), on new construction, and to repair and maintain its plumbing system?
2. Although the penitentiary is not mentioned in paragraph b. of Section 67-22-2, can the exemption provided therein apply to our operations?
3. Until recently, we had a licensed plumber in our employ. The helpers who worked under him are capable, practical plumbers with several years experience, however, they were unable to pass the examinations as prescribed by the Plumbing Board. May these employees perform the work, subject to approval of such work by a representative of the State Plumbing Board?"

CONCLUSIONS

1. Yes.
2. No.
3. No.

OPINION

ANALYSIS

Questions 1 and 2. The first paragraph of § 67-22-2, N.M.S.A., 1953, reads as follows:

"The provisions of this act shall apply to all installations, alterations, repairs and renovations of 'plumbing' and 'fixtures' as herein defined, within or on public or private buildings, structures, or premises, except as hereinafter provided:"

It seems clear to us that the intent of the Legislature was the New Mexico Plumbing Act was to apply to everyone except those specifically exempted from the Act. The only exemptions granted are, (a) that part of a system of a public service organization before the meter; (b) a system belonging to a railroad company, pipe-line company, mining company, gas company, oil company and an irrigated system on farms and ranches in open country; (c) single family dwelling units where the plumbing installation is done by the owner-occupier of such dwelling unit; (d) farm and ranch building plumbed by the owner. In none of these exceptions do we find the State Penitentiary named as being exempt from the provisions of the Plumbing Act. The only conclusion that can be drawn from this failure to name the Penitentiary is that the Legislature intended that this institution was to comply with the State Plumbing Law.

We, therefore, conclude that the Penitentiary must hire a licensed person to take care of its plumbing and gas needs, be it on new construction or the repair and maintenance of present systems. The State Penitentiary does not come within any of the exemptions set forth in § 67-22-2, N.M.S.A., 1953.

Question 3. The employees that you have who are unable to pass examinations prescribed by the Plumbing Board cannot perform work of this type subject to the approval of the State Plumbing Inspectors. The statutes covering the installation of plumbing and gas systems do not authorize the State Plumbing Inspectors to waive the requirement that this type of work be done by persons who have qualified by securing New Mexico licenses. Certainly the Plumbing Inspector would not be authorized to authorize your State Institution to violate the Plumbing Law.

We, therefore, conclude that we must answer your question 3 in the negative.