



Attorney General
Betty D. Montgomery

Opinion 99-048

September 2, 1999

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

Dear Prosecutor Whitney:

We have received your request for an opinion concerning the authority of a general health district to regulate plumbers. You have asked whether the board of health of a general health district, operating under the general rulemaking powers granted pursuant to R.C. 3709.21, has authority to require an educational curriculum as a condition for either a commercial or residential plumber to register as a plumbing contractor with the health district in order to engage in plumbing within the health district.

Your question pertains to the Delaware City/County Health Department and Board of Health. As authorized by R.C. 3709.07, the city health district of the City of Delaware has united with the general health district of Delaware County, *see* R.C. 3709.01, to form a combined health district, governed by a combined board of health. By statutory directive, the combined district constitutes a general health district, and the combined board of health has all the powers and duties of the board of health of a general health district. R.C. 3709.07; *see also* 1991 Op. Att'y Gen. No. 91-016.

You have informed us that, on August 25, 1998, the Board of Health of the Delaware City/County Health Department adopted plumbing regulations that state, in Section 2.2:

[R]egistration shall be required of each individual, firm, corporation, or association, engaged in the plumbing, installation business, except for any owner of a single family dwelling who desires to install plumbing in the home in which he lives or intends to live. Proof of at least ten hours of state approved plumbing contractor qualification certification continuing education shall be submitted as part of the application for registration by January 1, 1999.

These regulations apply to the combined general health district known as the Delaware City/County Health District.

Your question was submitted in response to 1999 Op. Att'y Gen. No. 99-009. That opinion states that a general health district does not have the authority to require a person to have a qualification certificate issued under R.C. Chapter 4740 in order to register with the district as a plumbing contractor.

1999 Op. Att'y Gen. No. 99-009 concludes that a general health district has authority to require the registration of plumbers but does not have authority to impose licensing requirements. That conclusion is based on statutes and case law that are discussed in detail in that opinion. We summarize them briefly in

the following paragraphs.

Boards of health have general authority to adopt rules that protect the public health. In particular, R.C. 3709.21 states: "The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances." This rulemaking authority, however, must be construed in light of other statutes that govern particular types of regulation. *See Cookie's Diner, Inc. v. Columbus Bd. of Health*, 65 Ohio Misc. 2d 65, 74, 640 N.E.2d 1231, 1236 (Franklin County Mun. Ct. 1994) ("[s]o long as the boards [of health] promulgate regulations designed to promote the general policy of the General Assembly to protect the public health, and so long as the regulations are reasonable, nondiscriminatory, and not contrary to constitutional rights and to legislation, the regulations would be valid"); 1994 Op. Att'y Gen. No. 94-044; 1994 Op. Att'y Gen. No. 94-030.

Recent statutes authorize the Ohio Construction Industry Examining Board to issue qualification certificates to various types of contractors, including plumbing contractors, but do not require that a plumber acquire such a certificate in order to engage in plumbing. *See* R.C. 4740.04-.06; 1999 Op. Att'y Gen. No. 99-009. Apart from such certificates, the statutes permit contractors to be licensed only by a municipal corporation pursuant to R.C. 715.27 or by a board of county commissioners pursuant to R.C. 3781.102. R.C. 4740.12(A). R.C. 715.27(B) grants a municipal corporation limited authority to license various types of contractors, including plumbing contractors, to operate within the jurisdiction of the municipal corporation. R.C. 3781.102(B) grants limited authority for a board of county commissioners to license electrical and heating, ventilating, and air conditioning contractors, but grants no authority for the board of county commissioners to license plumbing contractors. *See* 1999 Op. Att'y Gen. No. 99-009, at 2-67. Boards of health are not permitted to regulate the licensing of plumbing contractors, but they are permitted to require registration and assessment of a registration or license fee. R.C. 4740.12(B)(2).

This statutory arrangement is consistent with the long-established principle that a board of health has authority to require that those seeking to do business as plumbers within the health district register with the board, but the board of health has no authority to impose requirements for the licensing of plumbers. *See Wetterer v. Hamilton County Bd. of Health*, 167 Ohio St. 127, 146 N.E.2d 846 (1957); 1960 Op. Att'y Gen. No. 1462, p. 398 (finding health district empowered to require the registration, but not the licensing, of plumbers).

The basic difference between a registration requirement and a licensing requirement is that registration is merely an informational procedure under which a person is included on a list of those who engage in plumbing, whereas licensing imposes requirements of training or qualification and refuses licensure to one who does not meet the requirements. *See, e.g., Wetterer v. Hamilton County Bd. of Health*; 1960 Op. Att'y Gen. No. 1462, p. 398; *see also* R.C. 715.27; R.C. 3781.102. 1999 Op. Att'y Gen. No. 99-009 rejects the suggestion that a health district could impose a qualification certificate requirement on the grounds that such a requirement "would operate to prevent persons who lack a particular credential from functioning as plumbing contractors and thus would serve as a licensing requirement." 1999 Op. Att'y Gen. No. 99-009, at 2-70.

The requirement that a person meet particular educational standards must be rejected for the same reason. To require an educational curriculum as a condition for registration as a plumbing contractor would operate to prevent persons who lack a particular credential from functioning as plumbing contractors and thus would serve as a licensing requirement. The imposition of such a requirement would conflict with R.C. 4740.12 and would exceed the authority of the board of health. It must be

concluded, therefore, that a general health district does not have authority under the general rulemaking powers granted pursuant to R.C. 3709.21 to require a person to meet particular educational standards in order to register with the health district as a plumbing contractor for the purpose of engaging in plumbing within the health district. This conclusion applies to both commercial and residential plumbers.

This opinion makes no judgment concerning the purpose or value of the regulation in question. It does not deny the importance of plumbing regulation and education, or the authority of a health district to take certain types of action with respect to the regulation and inspection of plumbing. *See, e.g.*, R.C. 3703.01; R.C. 3703.08; R.C. 3707.01; R.C. 3781.03; R.C. 4740.12(B)(1); 1994 Op. Att'y Gen. No. 94-030; 1992 Op. Att'y Gen. No. 92-043. It does not intend to minimize the importance of the public policy to police certain professions in order to protect Ohio's citizens. This opinion concludes only that, under Ohio law as currently in effect, a general health district does not have authority under its general rulemaking powers to impose educational requirements upon persons who register with the health district as plumbing contractors.

Therefore, it is my opinion, and you are advised, that a general health district does not have authority under the general rulemaking powers granted pursuant to R.C. 3709.21 to require a person to meet particular educational standards in order to register with the health district as a plumbing contractor for the purpose of engaging in plumbing within the health district.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

ENDNOTES

¹R.C. 4740.12 states:

(A) Except as otherwise provided in this chapter, only a municipal corporation pursuant to section 715.27 of the Revised Code or a board of county commissioners pursuant to section 3781.102 [3781.10.2] of the Revised Code shall regulate the licensing of heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors.

(B) Nothing in this chapter shall be construed to limit the operation of any statute or rule of this state or any ordinance or rule of any political subdivision, district, or agency of the state that:

(1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;

1. Requires the registration and assessment of a registration or license fee of individuals who are engaged in the business of heating, ventilating, and air conditioning, refrigeration, electrical, plumbing,

or hydronics contracting.

² Although the board of health of a general health district does not itself have statutory authority to establish educational requirements for, or otherwise license, plumbing contractors, the board of health may, by agreement, exercise on behalf of a municipality that municipality's authority to license plumbing contractors who operate within the jurisdiction of the municipal corporation. R.C. 3709.281 (the board of health of a general health district may enter into an agreement with the legislative authority of a municipality under which the board of health is authorized to exercise any power, perform any function, or render any service that the legislative authority may exercise, perform, or render); *see* R.C. 715.27(B). A board of health may similarly enter into agreements with the board of county commissioners to exercise powers, perform functions, or render services on behalf of the county, *see* R.C. 307.153, but no such agreement can grant the board of health authority to license plumbing contractors in the unincorporated areas of the county because the board of county commissioners does not have that authority. *See* R.C. 3781.102(B); 1999 Op. Att'y Gen. No. 99-009, at 2-67. *See generally* R.C. 307.15 (authorizing contracts between a board of county commissioners and a health district) and R.C. 3781.102(B) (county licensing rules may be enforced within a municipality pursuant to a contract under R.C. 307.15).

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SYLLABUS: 99-048

A general health district does not have authority under the general rulemaking powers granted pursuant to R.C. 3709.21 to require a person to meet particular educational standards in order to register with the health district as a plumbing contractor for the purpose of engaging in plumbing within the health district.