

# MAINE STATE LEGISLATURE

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December 2, 1930

To Arthur G. Picher (Member of the Legislature)  
Re: Plumbing Regulations

. . . The State at the instance of the Health Department brought a proceeding in York County early in the year to test out the legal effect of State plumbing regulations against a plumber named Prescott who denied their force and effect as applicable to Sanford.

In deciding this case early in August, the Law Court invalidated the applicability of the State plumbing regulations to Sanford, which has a water and sewerage system, but said:

"However, . . . plans . . . must have the approval of the State Department of Health."

The Department of Health consequently put into effect the regulations requiring the submission of plans to which you refer.

As the matter stands under this ruling of the Court, the Health Department, as I understand it, feels that their duty is to enforce the regulation regarding plans until such time, if ever, as it has been modified either by Legislature or Court.

To test the interpretation of the statute as it stands, a case has been brought in Cumberland County, which in due course should reach the Law Court for determination.

I understand that there has been considerable discussion among the plumbers as to whether other provisions should be substituted by the legislature for this provision regarding plans. It has been suggested that a system of permits be substituted. Another suggestion made is that the right to pass, at least in the first instance, on plans be deputized to inspectors commissioned by the State and located at various points throughout the State, so that plans need not be submitted to Augusta before starting work.

Whether or not any such changes will be made depends largely on how the present regulations regarding plans work out, and whether they meet with the approval of the plumbers and the community. There is undoubtedly some objection, but on the other hand there are many in favor. . . .

It has been suggested that the Health Department might, without further legislation, introduce a system of permits as a condition for waiving the requirement of plans; but, as I understand it, the Health Department is by no means convinced that the system of plans now being worked out is impracticable.

The attorney for the president of the Master Plumbers' Association has written me suggesting a conference with a view to arriving by agreement at a permit system instead of the existing system of plans. . . .

I wrote him that . . . it is for the Health Department to determine its policy and make its rulings, although I want to be of every assistance that I can toward working out a problem which originated in the decision of the Law Court in State v. Prescott, where I was of counsel for the State. I have not heard from him further, but presume that in due course he will take it up with me further and very likely with the Health Department, to whom I shall, of course, refer him for definite action. . . .

I judge that you are one of those opposed to the plan regulations. My practical suggestion is that you talk the whole matter over with Dr. Campbell of the Health Department, who is very anxious to work out the situation in a way that will be satisfactory to everyone concerned. . .

Clement F. Robinson  
Attorney General

(In writing to Dr. Campbell on December 20, 1930, Mr. Robinson said in part):

It is not for me to take any part in working out regulatory details in the Health Department, except in so far as I may be called on to do so by the department, although I am very glad to be of any assistance that I can and have been necessarily called into this matter of plumbing regulations and plans by the facts that I had a share in the Prescott case, subsequently interpreted the decision to you, and now have for disposal the test case brought against Mr. Knudsen in the Municipal Court of South Portland.

I judge from Mr. Knudsen's last call that there may be two possible misunderstandings which I should mention.

First, the Supreme Court did not give any "orders". As I tried to make plain in my letter interpreting Judge Dunn's opinion, the situation is this: The Court decided that Prescott should be freed because, among other reasons, your plumbing regulations were ineffective in Sanford. In connection with giving this decision, Judge Dunn made some comments on the law, one of which was the comment regarding plans which I wrote to you. This was what the lawyers call "dictum". It is entitled to great importance, because it was the utterance of an able judge in the course of his opinion concurred with by the other judges in deciding the case. Neither he or the court had the power to give abt "orders" with reference to plans in connection with deciding the Prescott case.

In short, Judge Dunn's opinion is important and significant, but it is not a mandate.

Secondly, with reference to the conference of Master Plumbers held at Augusta during November. As I remember it, this conference had been arranged before Mr. Knudsen and his attorney talked with me. My suggestion to them, and at the same time to you over the telephone, was

that the prevailing sentiment of the plumbers one way or the other would be of great importance in working out the satisfactory enforcement of existing regulations and guiding the Legislature in making, or refusing to make, a change. It is to some extent, as I then suggested, a matter of selling a proposition to the plumbers. If you could convince the plumbers generally that a system of plans is advisable, that system would stick; otherwise it might not. . . I awaited with interested word as to the outcome of the meeting and judge that there is some difference in opinion as to its success.

His attorney wrote me regarding a possible conference between the department and them, and I am sure that this would be desirable, as I have said both to you and to him; but that is wholly up to you and him to arrange.

Please let me say again that I don't want to interfere in any details of the conduct of your department; but if I can be of any assistance, I shall be glad to do so. . . I will inform Mr. Knudsen that I am writing to you as above.

Clement F. Robinson  
Attorney General