

# MAINE STATE LEGISLATURE

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December 15, 1964

L. Earle Hutchinson, Chairman

Electricians Examining Board

Jerome S. Matus, Assistant

Attorney General

**Licensing Powers of Electricians Examining Board**

**FACTS:**

Information has been received by the Electricians Examining Board that the wiring in an electrical installation in a nursing home done in recent months was not in accord with the minimum requirements of the National Electrical Code and was, in a number of instances, of a nature to create hazards to life and property. The electrician who did the work had a license when the work on the nursing home commenced, but in February of 1964, while work was still being done, his license lapsed, and some electrical work was done without an electrician's license. The man who did the installation has not applied for a renewal of his electrician's license.

**QUESTION #1:**

Is it within the power of the Electricians Examining Board to refuse to issue a renewal license to this man?

**ANSWER:**

See opinion.

**OPINION:**

The pertinent section relating to renewals of electricians' licenses is R. S. Me. 1954, c. 82, § 8, as amended by the Public Laws of Maine, 1955, c. 41, § 6, which states:

"All licenses issued shall expire one year from date of issue and they may be renewed thereafter for periods of one year without further examination on payment of a fee of \$5 for a master's license, \$2 for a journeyman's license, \$1 for a limited, apprentice or helper's license."

You will note that the language of this section contains the words "may be renewed" and does not state "shall be renewed." This language clearly permits the Electricians Examining Board, which is an administrative agency, to use discretion as to the renewing or the refusal to renew a license. This discretion must be properly exercised. In many instances

there is a great deal of difficulty in determining whether, in a given fact situation, a refusal to renew was a proper exercise of a discretionary power granted to an administrative agency by a statute.

1 Am. Jur., § 183, contains the following language which establishes general guide lines for administrative determinations:

"Administrative determinations must have a basis in law and must be within the granted authority, must accord with the prescribed statutory standards and policy, and generally must represent a reasoned conclusion and not an arbitrary fiat. In interpreting the scope of power conferred the court will not readily attribute a purpose to vest powers which may be arbitrarily exercised by the agency."

If the information received by the Electricians Examining Board is in the form which would enable the Electricians Examining Board to bring a complaint before the Administrative Hearing Commissioner for the suspension or revocation of the license of a licensed electrician, it is my opinion that the Board may in its discretion refuse to issue a renewal license.

If on the other hand the information received is in the form that would not warrant such a complaint, an action by the Board in refusing to renew could be considered arbitrary and an improper use of their discretion.

QUESTION #2:

Is it within the power of the Board to refuse to issue a renewal license without an examination?

ANSWER:

Yes.

OPINION:

The Board can properly use its discretion to require an examination for a renewal license in order to satisfy itself that an applicant for a renewal license still meets the standards established for an original license.

In exercising its discretion, the Board should have a substantial reason for re-examining the qualifications of a person who had previously been licensed. Failure to comply with minimum requirements of the National Electricians Code of a nature to create hazards to life and property would be an example of a substantial reason. Passage of time can be a substantial reason when coupled with surrounding facts which caused the passage of time.

The Board should endeavor to make similar determinations in similar factual situations to help substantiate a proper use of discretion.

QUESTION #3:

Would installation of wiring which does not comply with the minimums of the National Electrical Code be considered a misdemeanor under Chapter 82, Section 14, or would Chapter 82, Section 11, apply and the wireman be brought before the hearing officer? Consider both a man with a license and a man without or whose license has lapsed.

ANSWER:

See opinion.

OPINION:

As to the man with a license, a failure to comply with the minimums of the National Electrical Code would not be a violation of R. S. 1954, c. 82, § 14, as that section does not appear to cover such an individual. This same man, however, could be brought before the Administrative Hearing Commissioner to have his license suspended or revoked under R. S. 1954, c. 82, § 11, as amended.

The man whose license has lapsed and who did electrical work after the lapsing of his license, and the man without a license who did electrical work are to be treated in the same manner. They can be charged with misdemeanors under R. S. 1954, c. 82, § 14, provided they received compensation for their electrical installations. This section states in part:

"Any person who makes electrical installations for compensation without having first obtained a license hereunder . . . shall be deemed guilty of a misdemeanor and, if convicted thereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months, or by both."

The fact that their wiring did not comply with the minimums of the National Electrical code is not a relevant fact in charging a violation of this section.

These same men could not be brought within the purview of R. S., 1954, c. 82, § 11, as amended, as this section pertains only to licensed electricians.

QUESTION #4:

Does the Electricians Examining Board have the power to allow an applicant for a license to appear before the Executive Secretary (or his representative) without any other Board member present and be given an examination and a license?

ANSWER:

See opinion.

OPINION:

The pertinent section relative to the above question is R. S., 1954, c. 82, § 7, as amended by Public Laws of 1955, c. 413, § 3, which states:

"Each applicant for license shall present to the executive secretary of the board, on blanks furnished by the board, a written application for examination and license, containing such information as the board may require, accompanied by the required fee of \$10 for a master's license, \$5 for a journeyman's license or \$3 for a limited license. Examinations shall be in whole or in part in writing and shall be of a thorough and practical character. They shall include such provisions of the National Electrical Code as the board may deem appropriate. Any person failing to pass his first such examination may be

re-examined at any subsequent meeting of said board, within one year of such first examination without additional fee and thereafter may be examined as often as he may desire upon the payment of the required fee. Existing licenses shall be recognized as valid until expiration and equal to a journeyman's license or may be exchanged for a master's license upon payment of the additional fee and either satisfactory proof of qualifications or passing of the necessary examinations."

This section provides that "any person failing to pass his first such examination may be re-examined at a subsequent meeting of said Board." It is implied from this language that the first examination must have been at a prior meeting of said Board. The Board may delegate to its Executive Secretary or his representative the obligation to proctor the actual examination so that at the time of the meeting the members of the Board need not be present in the examination room when the examination is given. However, the Board cannot delegate its legal duties as to the issuance of the licenses. As 4 members constitute a majority of the Board, 4 or more members must vote in favor of the issuance of such a license. It should be noted that the Executive Secretary of the Board is the member of the Board to whom the applications must be presented.

Also, it should be noted that there is a specific provision which states:

"... the Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, providing 3 or more members of the board vote in favor of such re-issuance."  
R. S., 1954, c. 82, § 11, as amended.

This provision was part of the original act relating to licensing of electricians. P. L. Me. 1953, c. 307. There has been no change in this provision since its original enactment. The act also provided that the board would consist of 5 members. (An Executive Secretary, who was to be the Insurance Commissioner or a representative from his department and 4 appointed members.) A 1955 amendment authorized a 7 member board by increasing the number of appointive members from 4 to 6. R. S. Me. 1954, c. 82, § 3, as amended by P. L. Me. 1955, c. 413, § 2. Thus, since the 1955 amendment increasing the number of members of the board from 5 to 7, a situation exists whereby 3 members, a minority of the

board, has statutory authority to re-issue a certificate of registration that had been revoked. It is suggested that it is in order for an amendment providing that 4 or more members of the board vote in favor of a re-issuance of a revoked certificate.

QUESTION #5:

Does the Board have the power to require a man renewing his license after a lapse of one or two years to take an examination?

ANSWER:

See opinion #2.

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