

MAINE STATE LEGISLATURE

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October 19, 1966

Dear Fisher, M. D., Commissioner
Attention: Earle W. Tibbetts, Director, Division of Sanitary Engineering
James M. Cohen, Assistant Attorney General

Health and Welfare

Corporations and partnerships engaged in the plumbing business.

This is in reply to your request for an opinion dated August 12, 1966.

FACTS:

Pursuant to 32 M.R.S.A. §§ 3301 - 3507, the Plumbers' Examining Board is empowered to issue licenses to master plumbers, journeymen plumbers, and corporations and partnerships. With respect to the latter category, the following provision applies:

The board may issue its license to corporations and partnerships engaged in the plumbing business and applying therefore, on payment of a fee of \$40.00, provided one or more officers or employees of any such corporation directly in charge of the business affairs of such corporation, or the members of such partnership directly in charge of the business affairs, apply for the examinations and satisfy the board of their qualifications as master plumbers.
(32 M.R.S.A. §§ 3507)

It has been a practice of the Board to issue a master plumber's license to a partnership or corporation so long as there is a licensed master plumber employed by the partnership or corporation.

QUESTION 1.

Can a corporation or partnership operate a plumbing business without a license if it employs a master plumber?

ANSWER.

No.

OPINION.

A corporation or partnership must obtain a license from the Board before it can operate a plumbing business. There is a distinction between a license issued to master plumbers and one issued to corporations and partnerships. The fact that a master plumber is employed by the corporation or is a member of the partnership satisfies only the requirement of his personal qualification as a master plumber.

QUESTION 2.

Can a license be issued to a corporation or partnership if a master plumber is employed by it?

ANSWER.

Only if the master plumber is directly in charge of the business affairs of the corporation or partnership.

OPINION.

A license may issue to a corporation or partnership under the following conditions:

- a) the corporation or partnership is engaged in the plumbing business;
- b) at least one officer, employee or partner is directly in charge of the plumbing business affairs; and
- c) such officer, employee or partner applies for examination and qualifies as a master plumber.

The employment of a master plumber by a corporation can satisfy the requirement of condition (c) provided he also satisfies condition (b). Some evidence of this nature should appear on the application. Otherwise the Board does not have sufficient information from which to determine whether a license can be issued to the corporation.

In a partnership a member of the partnership must satisfy the qualifications for a master plumber. The master plumber would have to be a member of the partnership.

QUESTION 3.

- a) Is the specific job and title of the individual needed on the application?
- b) Do only specific positions constitute compliance with § 3507?
- c) Can the written word of the corporation or partnership be accepted with respect to an official position?

ANSWER.

- a) Not necessarily.
- b) No.
- c) Yes, but see opinion.

OPINION.

The most important requirement of the statute is that the individual qualifying as a master plumber must be "directly in charge of the business affairs." This necessarily means directly in charge of the plumbing business, so that the job and not the title of the individual is a determining factor. Whether the individual is an officer or employee of the corporation is not as important as the job responsibility. The name of a particular official position, therefore, can be accepted so long as the Board is convinced that the individual who is attempting to satisfy the requirements for master plumbers is the individual in charge of the plumbing business.

QUESTION 4.

May the license of a corporation or partnership be revoked if a master plumber employed by it does not satisfy all the conditions of the license requirements?

ANSWER.

Yes.

OPINION.

If a corporation has been issued a license to operate a plumbing business and it is discovered that an individual employed by it as a master plumber or as one who satisfies the qualifications as a master plumber is not the officer or employee directly in charge of the business affairs of the corporation, the license can be revoked pursuant to 32 M.R.S.A. § 3404.

QUESTION 5.

Is the master plumber required to stay on the job at all times, or can he merely lay out the work and periodically visit to inspect what has been accomplished by journeymen plumbers?

ANSWER.

See opinion.

OPINION.

It is impossible to give a direct "yes" or "no" answer to this type of question. What constitutes "directly in charge of business affairs" can be determined only from particular circumstances. The

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criteria in some cases might be analagous to the case of the individual master plumber contracting his own work who employs journeymen plumbers. Some situations may require more direct control than others so that the individual qualifying as a master plumber who is in charge of the plumbing business may be required to be on the job at all times. In other types of situations this individual may be more of a supervisor.

JMC:rhk

cc: Attorney General

/s/ James M. Cohen

James M. Cohen
Assistant Attorney General