

MAINE STATE LEGISLATURE

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Department of Human Services

↳ Licensing Relation of one permit to violation of other laws.

30 M.R.S.A. § 221-325 STATE HOUSE, AUGUSTA, MAINE

Date March 16, 1977

To Donald Hoxie, Director, Division of Health Engineering

From James Eastman Smith, Assistant Attorney General

Subject Opinion regarding denial of a plumbing permit due to a violation of municipal ordinance.

QUESTION: May a local plumbing inspector (LPI) refuse to issue a plumbing permit when the proposed plumbing installation meets the requirements of the Maine State Plumbing Code and all local ordinances relating to plumbing if the structure to which the plumbing is to be attached is in violation of any other local ordinance?

ANSWER: No.

FACTS: A municipal plumbing inspector (LPI) refused to issue a plumbing permit to a landowner whose plans complied with all the requirements of the Maine State Plumbing Code. The permit was denied because the structure to which the plumbing system was to be attached violated a local ordinance, adopted pursuant to the Mandatory Shoreline Zoning Act, which required the principal structure to be set back at least seventy-five (75) feet from the normal high water mark of any pond or river. The municipality did not have its own plumbing ordinance at the time of the refusal to issue a plumbing permit.

REASONS: Every municipality in the State of Maine is required to appoint one or more inspectors of plumbing. These inspectors must be certified by the Commissioner of the Department of Human Services. 30 M.R.S.A. § 3222. This statute further provides that Plumbing inspectors shall perform the following duties:

- A. Inspect all plumbing for which permits are granted... to assure compliance with state and municipal regulations and investigate all construction or work covered by those regulations.
- B. Condemn and reject all work done or being done or material used or being used which does not comply with the provisions of state and municipal regulations and order changes necessary to obtain compliance.
- C. Issue a certificate of approval for any work approved by him;
- F. Perform other duties as provided by municipal ordinance.

The above statute limits the inspector's duties to the inspection of plumbing which is defined as "the installation, removal, alteration or repair of pipes, fixtures and other

apparatus for bringing in the water supply and removing and disposing of liquid and water-carried wastes, including the necessary piping and water connections to all types of domestic heating apparatus using water and subsurface sewage disposal systems..." 30 M.R.S.A. §3221.3

30 M.R.S.A. §3222 further limits the plumbing inspector to the inspection of "plumbing for which permits are granted". 30 M.R.S.A. §3223.1 requires that a person obtain a permit from a municipal plumbing inspector prior to placing any pipes, tanks, faucets, valves or other fixtures in a building, or installing any septic tank or other system of private sewage disposal to receive drainage from such plumbing.

Although the statute does not specifically direct the LPI to issue a permit if all work done or to be done complies with state and local plumbing regulations, this can be implied from 30 M.R.S.A. 3222(B) which limits denial of a permit when "work done" or the "material used" which he has a duty to inspect does not comply with state or local ordinances. The language does not permit the local plumbing inspector to go beyond the inspection of plumbing and sewage disposal systems to assure compliance with other local or state laws relating to building materials, electrical installation or zoning.

An elementary rule of statutory construction is that words must be given their common meaning unless the act discloses a legislative intent which is contrary to the literal interpretation. Union Mutual Life Insurance Company v. Emerson Me., 345 A2d 504 (1975). Where there is no manifest legislative intent which is contrary to the plain meaning of the statute, the Maine Court has not permitted resort to subtle and forced construction for the purpose of either limiting or extending the operation of the statute. Frost v. Lacey Me., 231 A2d 441 (1967).

It would be forcing the plain language of the statute to imply that the legislature intended the plumbing inspector to function as code enforcer for all state and local ordinances which relate to the building in which the plumbing is located or to which the plumbing is attached.

30 M.R.S.A. §3222.F which states that the plumbing inspector shall "perform other duties as provided by municipal ordinance" is broad language which seems, at first blush, to give the municipality the power to require the LPI to refuse a plumbing permit if the building does not comply with other ordinances such as zoning. However, if the meaning of the words in a statute are unclear, the practical consequences of any particular interpretation should be considered so as not to give the statute an unreasonable or absurd construction, or result in defeating the original purpose of the legislation. Davis v. State Me., 306 A2d 127 (1973);

Ballard v. Edgar Me., 268 A2d 884 (1970); Stetson v. Johnson Me., 187 A2d 740, 159 Me. 37 (1963).

If 30 M.R.S.A. §3222 F were interpreted to permit a municipality to require the plumbing inspector to deny a plumbing permit if the building violated other than plumbing ordinances, such a reading would require a plumbing inspector to be knowledgeable about all zoning, electrical and building codes. This would be unreasonable since the legislature only intended the inspector to be certified to inspect plumbing. In addition to a plumbing inspector, Maine Law provides that municipalities may appoint building inspectors, 30 M.R.S.A. 2151 4 A,C,E; 25 M.R.S.A. §2351 et seq.; electrical inspectors, 30 M.R.S.A. §2553 et seq., and it provides that zoning ordinances shall be supervised by planning boards or other specialized agencies of the municipality 30 M.R.S.A. §4961 et seq.

These sections among others indicate a legislative intent that the municipality should provide for the inspection of certain aspects of residential structures by inspectors who are specialists in a specific area.

The language of subd. F. may be interpreted to mean that the municipality can require the plumbing inspector to file additional reports or require that the "materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by and through which water, waste or sewage is used or carried", and the materials and sizes of pipes meet other criteria or standards which are more stringent than provided for by the code. 30 M.R.S.A. §3221 permits municipalities to prescribe requirements in those areas which are in addition to or more stringent than the Department regulations provided that the municipal regulations receive department approval.

MAINE STATE PLUMBING CODE

22 M.R.S.A. §42.3 requires the Department "to adopt rules and regulations relating to plumbing and subsurface sewage disposal systems and the installation and inspection thereof consistent with Title 30, sections 3221 and 3225..." This section also provides for penalties for violation of rules and regulations adopted under 22 M.R.S.A. §42.3 and 30 M.R.S.A. 3221 et seq.

Since the legislature required that the rules be consistent with 30 M.R.S.A. §3221 to 3225 it obviously intended that the Department should not make rules and regulations which expand or limit the plumbing inspector's statutory powers. The Department, therefore, cannot by regulation require the local plumbing inspector to check the premises for violations of state and local laws unrelated to plumbing or health, safety and welfare as related to plumbing and base the denial of a plumbing permit on such violations.

Pursuant to 22 M.R.S.A. §42.3, the Department promulgated the Maine State Plumbing Code, Part I & II. Part II, sec. 2.4 reads: If the LPI determines that the plans, specifications, drawings, descriptions or information furnished by the applicant is in compliance with this code and local ordinances, he shall issue the permit applied for upon payment of the required fees. The issuance or granting of a permit or approval of plans shall not prevent the Department or the LPI from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this code and any other ordinance".

If the words "local ordinance" and "any other ordinance" were interpreted literally to mean any and all local ordinances, including local zoning ordinances, unrelated to plumbing or sewage disposal, the Department would be acting beyond the scope of the authority granted to it by the Legislature, and this specific part of the regulation could not be enforced. Stucki v. Plavin Me., 291 A2d 208 (1972).

The State in the fullest exercise of its sovereignty has the inherent power to pass regulations designed to promote health, safety and welfare and to delegate this power to any agency. Ace Tire Company v. Municipal Officers of the City of Waterville Me., 302 A2d 90 (1973). When an agency is empowered by express grant to make regulations in certain cases and for certain purposes its power to legislate is limited to the cases and objects specified and if the regulation is drawn outside the scope of the grant and exceeds the powers to legislate conferred upon the agency it is invalid. Small v. Maine Board of Registration and Examination in Optometry Me., 293 A2d 786 (1972).

The regulations of any agency will be treated as if promulgated by the legislature and the agency will be presumed to have acted properly. State v. Boyajian Me. 344 A2d 410 (1975); Central Maine Power v. Waterville Urban Renewal Me., 281 A2d 233 (1971). However, to withstand a constitutional attack the regulations must not be unreasonable, arbitrary, or capricious and the means adopted must have a real and substantial relation to the object sought to be attained by the Legislature. Ace Tire Co. Inc. v. Municipal Officers of the City of Waterville Me., 302 A2d 90 (1973).

The power to issue regulations is not the power to change the law. The regulations must be consistent with the words of the statute and the intent of the Legislature. Joint Tribal Council of Passamaquoddy Tribe v. Morton 388 F. Supp 649 (1975, D.C. Me).

This construction is consistent with applicable statutes and other sections of Part II of the Plumbing Code such as sec 1.28 which defines a local plumbing inspector as "the appointed municipal official in each incorporated municipality charged with implementing the municipal plumbing ordinances or,

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where no such ordinance is in force, to carry out the duties required by Title 30 §3222." Sec. 9.1 states that "approval of any of the three [approved private sewage] systems for a particular site shall be dependent on: the soils and ground water characteristics of the site, and the particulars of the facility to be served." There is no mention or implication that "particulars of the facilities to be served" could mean or that the approval could depend upon compliance with a local zoning ordinance.

The Department has no mandate to see to the "successful operation" of local zoning laws. Such ordinances must meet the requirements of 30 M.R.S.A. §4961 et seq. and be enforced by the terms of those statutes, not by the local plumbing inspector unless the zoning requirement is reasonably related to plumbing and the purpose of 30 M.R.S.A. §3221 et seq.

The Mandatory Shorelands Zoning Act cannot be considered a local ordinance dealing with plumbing in its entirety. Certainly, section II (J) of the Shoreland Zoning Ordinance for the Town of Mount Vernon, Maine, which describes the sanitary standards for subsurface sewage disposal systems is related to plumbing but this section defers to the requirements of the State Plumbing Code.

However, all other sections including sect. 11, subd. M of the Mount Vernon Ordinance which the structure in the present situation was said to violate does not deal directly with Plumbing and is a set back requirement which, unlike sec 3.9 of Part II, Maine State Plumbing Code (requiring denial of permit for insufficient lot area or improper soil for proper sewage disposal) is unrelated to the health, safety and welfare aspects of plumbing regulation.

This section therefore is not an ordinance dealing with plumbing and is therefore not enforceable by the LPI. Under such circumstances the State Plumbing Code would require the LPI to issue a permit since the word shall contained in sec. 2.4 of the Plumbing Code is mandatory according to sec. 1.50 of the Code.

The problem presented here is further complicated by the fact that, at the time the permit was denied, the LPI was also the Code Enforcement Officer for the municipality's Shoreland Zoning Ordinance. In the capacity of code enforcement officer he could deny a permit because of non-compliance with Sec. 11, Sub. M. of the Mount Vernon Shoreland Zoning Ordinance. See Section 12 subd. DZ of the same Ordinance. But if the above interpretation of "any other ordinance" is accepted, he should not have refused the plumbing permit in his capacity as LPI.

CONCLUSION:

The Department of Human Services has no authority to expand

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the Local Plumbing Inspector's duties to include the indirect enforcement of zoning and other ordinances unrelated to plumbing. Although a municipality might be able to administratively require that one person or agency in the municipality give final approval to begin construction if several licenses and ordinances are involved, the municipality cannot expand or limit the LPI statutory duties to assure that the structure is in compliance with all other local ordinances, the enforcement of which has not been delegated to the LPI by statute.

JES:mm