

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 97-F-12

Date issued: December 4, 1997

Requested by: Robert J. Leingang, Secretary Chief Inspector
North Dakota State Plumbing Board

- QUESTIONS PRESENTED -

I.

Whether the licensing requirements of N.D.C.C. ch. 43-18 apply to all persons performing plumbing or only to those who perform plumbing for hire.

II.

Whether an unlicensed individual can perform plumbing in a house being newly constructed for the individual's use as a dwelling place upon completion.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the licensing requirements of N.D.C.C. ch. 43-18 only apply to persons who perform plumbing as a livelihood or source of profit.

II.

It is my further opinion an uncompensated individual may perform plumbing in a house being newly constructed for use as the individual's dwelling place upon completion. The plumbing in the newly constructed house must be inspected by the Plumbing Board to determine whether it meets the North Dakota Plumbing Code, unless the home is not connected to a public system of waterworks or sewerage.

- ANALYSES -

I.

N.D.C.C. ch. 43-18 establishes the North Dakota State Board of Plumbing for the purpose of licensing plumbers and regulating the practice of licensed plumbers. N.D.C.C. § 43-18-11 establishes when

an individual must have a license issued by the Board. That section provides:

No person, firm, corporation, or a limited liability company shall engage in the business of a master plumber, journeyman plumber, or plumber's apprentice in any location of this state having a public system of waterworks or sewerage unless registered and licensed to do so by the board.

(Emphasis added.) Similar language is found in two other provisions:

No person, firm, corporation, or limited liability company shall engage in the business of installing plumbing and shall not install plumbing in connection with the dealing in and selling of plumbing materials and supplies in any location in this state having a public system of waterworks or sewerage, unless at all times a registered and licensed master plumber, who is responsible for the proper installation thereof, is in charge of such work. In cities of less than one thousand population and in all rural areas, a licensed journeyman plumber may engage in the business of installing plumbing.

N.D.C.C. § 43-18-10 (emphasis added).

A plumber registered and licensed by the board to engage in the business of master plumber, journeyman plumber, or plumber's apprentice may engage in or work at the business of plumbing at any place in this state, except in cities that have adopted ordinances requiring a municipal license or registration in addition to the state license before permitting any plumber to work in such municipality.

N.D.C.C. § 43-18-16 (emphasis added).

None of the above provisions require a license for individuals to perform plumbing; the above provisions prohibit individuals and business entities from engaging in the business of plumbing without a license.

N.D.C.C. ch. 43-18 does not define the phrase "engage in the business of." The phrase must, therefore, be understood in its ordinary sense. N.D.C.C. § 1-02-02. The term "engage" is generally understood to mean "[t]o involve oneself or become occupied; participate" or "[t]o assume an obligation; agree." The American

Heritage Dictionary 454 (2d coll. ed. 1991). "Business" is generally understood to mean "[t]he occupation, work, or trade in which a person is engaged," "[a] specific occupation or pursuit," "[a] commercial enterprise or establishment." Id. at 220. Thus, as generally understood, to "engage in the business of" means to perform services as a livelihood or source of profit.¹

This understanding is supported by case law in other jurisdictions. See United States v. Day, 476 F.2d 562 (6th Cir. 1973) (to be engaged in any business means the business occupies the time, attention and labor of the person for the purpose of livelihood or profit); State v. Bragg, 57 So.2d 556 (Ala. Ct. App. 1951) (to engage in the business signifies "that which occupies the time, attention, and labor of men, for the purpose of a livelihood or profit"), rev'd on other grounds, 57 So.2d 559 (Ala. 1951); Rice v. Garnett, 84 So. 557 (Ala. Ct. App. 1919) ("To engage in a business, within the meaning of this act, is to pursue the occupation as a livelihood or as a source of profit, but it is not necessary that it should have been the defendant's sole occupation."), cert. denied, 85 So. 921 (Ala. 1920); State v. Faatz, 76 A. 295 (Conn. 1910) (performing a dental operation is not the same thing as engaging in the practice of dentistry); Snyder v. Heinrichs, 55 N.E.2d 332 (Ind. App. 1944) ("Occasional isolated acts of loaning money to accommodate one's customers and friends do not constitute 'engaging in the business' of loaning money"); State v. Jordan, 20 So.2d 543 (La. 1944) (manufacturer of four bottles of beer is not "engaging in the business" of manufacturing or producing beer); Young v. Town of Vienna, 123 S.E.2d 388 (Va. 1962) (a single act of renting land zoned for commercial use does not indicate the lessor was engaged in the business of renting commercial property); Carsten v. Dept. of Labor and Industries, 19 P.2d 133 (Wash. 1933) ("a householder who erects a chicken house on his home property is not, by reason of that act, engaged in the business of building").

That the Legislature only intended to require a license of individuals performing plumbing as part of a business or pursuant to employment is evidenced by N.D.C.C. § 43-18-23. That section provides:

¹ This office has previously indicated that all plumbing "work" must be performed by licensed individuals, with few exceptions. Letter from Attorney General Robert Wefald to E. F. Welch (August 16, 1984). However, the meaning of "engage in the business of" was not an issue in that opinion. I interpret the term used in that opinion as a short-hand reference to works-for-hire, and therefore the prior opinion is not inconsistent with this opinion.

It is unlawful for any person to work, for compensation, as a master plumber, journeyman plumber, or plumber's apprentice without being registered and licensed as a plumber in such classification.

(Emphasis added.) Had the Legislature intended to make it unlawful for a person not being compensated to perform plumbing, the Legislature could have so stated. It did not.

The only language in N.D.C.C. ch. 43-18 indicating that the Legislature may have intended to prohibit persons not being compensated from performing plumbing is found in N.D.C.C. § 43-18-11. That section authorizes unlicensed individuals to "do plumbing work which complies with the provisions of the minimum standards prescribed by the board on premises or that part of premises owned and actually occupied by the person as a residence." This exception is meaningless if any person not performing plumbing as part of a business can perform plumbing, whether at their residence or not. The legislative intent of adopting the exception is unclear in light of the other provisions in N.D.C.C. ch. 43-18. Although the intent of the exception is somewhat unclear, the exception cannot be read to override the plain language of the other sections of N.D.C.C. ch. 43-18. When N.D.C.C. ch. 43-18 is read as a whole, it is clear the Legislature only intended to require licenses of persons and business entities performing plumbing as a livelihood or source of profit (for remuneration).

II.

As discussed in response to question one, a license is only required if an individual is performing plumbing as a livelihood or source of profit. Accordingly, an unlicensed individual not receiving compensation can perform plumbing in a home to be used by the unlicensed person as a dwelling place upon the home's completion. Although an uncompensated person need not be licensed to do plumbing in a home owned by the unlicensed individual, the plumbing performed by the unlicensed individual still needs to be inspected. N.D.C.C. § 43-18-17.3 provides the Board shall inspect installations in newly constructed dwelling units, unless the unit is not connected to a public system of waterworks or sewerage.

ATTORNEY GENERAL'S OPINION 97-12
December 4, 1997
Page 5

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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