

**LETTER OPINION
2006-L-31**

September 20, 2006

Mr. Robert J. Leingang
Secretary-Chief Inspector
North Dakota State Plumbing Board
204 West Thayer Avenue
Bismarck, ND 58501

Dear Mr. Leingang:

Thank you for your letter asking about an exception to the general statutory requirement that a master plumber must be in charge of all plumbing installations in the state. The exception, contained in N.D.C.C. § 43-18-10, provides that in cities of less than 1,000 people and in “all rural areas” a licensed journeyman plumber may engage in the business of installing plumbing. Based on the following, it is my opinion that the term “all rural areas” as used in N.D.C.C. § 43-18-10 means all land outside a city’s territorial limits, including nearby land within a city’s extraterritorial jurisdiction.

ANALYSIS

The North Dakota State Plumbing Board (the “Board”) is required to enforce the provisions of N.D.C.C. ch. 43-18 and establish regulations for the licensing of plumbers as master plumbers, journeyman plumbers, or plumber’s apprentices.¹ “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.”² Any person who violates any provision of N.D.C.C. ch. 43-18 or of the plumbing code is guilty of an infraction.³ In addition to this criminal penalty, the civil remedy of injunction is available to plumbing inspectors to restrain and enjoin violations of any provisions of N.D.C.C. ch. 43-18.⁴

In general, no person or firm may engage in the business of installing plumbing and may not install plumbing unless a licensed master plumber is responsible for the proper installation of the plumbing. Specifically:

¹ N.D.C.C. § 43-18-08(1), (2).

² N.D.C.C. § 43-18-23 (emphasis supplied).

³ N.D.C.C. § 43-18-24.

⁴ N.D.C.C. § 43-18-25.

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 of 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.⁵

But an exception is provided for the installation of plumbing in small communities and rural areas:

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.⁶

You indicate in your letter that the Board has interpreted the exception for all rural areas to mean those areas that are not subject to any city's lawful jurisdiction. You further indicate that this interpretation by the Board has excluded areas that are outside a city's limits, but within a city's extraterritorial jurisdiction from the exception allowing journeyman plumbers to install plumbing.

Prior to 1993, no person was permitted to engage in the business of installing plumbing or permitted to install plumbing in connection with the dealing in and selling of plumbing materials and supplies in any incorporated city in the state having a system of waterworks or sewerage, unless at all times a registered and licensed master plumber responsible for the proper installation thereof was in charge of such work.⁷ In 1993, the statute was amended to require the supervision of the installation of plumbing by a master plumber in any "location" of this state having a "public" system of waterworks or sewerage.⁸ However, the exception in question was included in the 1993 amendments and provided that in cities of less than 1,000 population and in all rural areas, a licensed journeyman plumber could engage in the business of installing plumbing.⁹

In your letter you question whether the Board's longstanding interpretation of N.D.C.C. § 43-18-10 is correct and particularly ask whether the term "rural areas" means all lands outside of a city's territorial limit or all land outside a city's extraterritorial jurisdiction.¹⁰ The

⁵ N.D.C.C. § 43-18-10.

⁶ Id.

⁷ See 1993 N.D. Sess. Laws ch. 430, § 2.

⁸ 1993 N.D. Sess. Laws ch. 430, § 2.

⁹ Id.

¹⁰ Cities have two main types of extraterritorial jurisdiction. In N.D.C.C. § 40-06-01(2), a city governing body has jurisdiction over all places within a half mile of its municipal limits

North Dakota Supreme Court has stated that it will ordinarily defer to a reasonable interpretation of a statute by the agency enforcing it, but that an interpretation which contradicts clear and unambiguous statutory language will not be followed.¹¹

Neither the phrase “all rural areas” nor the word “rural” is defined in N.D.C.C. ch. 43-18. Generally, words are to be understood in their ordinary sense unless defined in the code.¹²

In N.D.A.G. 94-L-223, this office had occasion to construe the term “rural” as it applied to membership on school boards, stating:

N.D.C.C. § 15-28-02 does not define the terms “rural”¹³ or “urban” and, therefore, it must be presumed that the Legislature was aware of the common and ordinary meanings of those terms when it used them in the statute. Although the terms are defined for an isolated purpose in N.D.C.C. § 10-30.3-01 concerning North Dakota Future Fund activities, those definitions are irrelevant to N.D.C.C. § 15-28-02. The common and ordinary meaning of the term “rural” is “[c]oncerning the country, as opposed to urban (concerning the city).” Black’s Law Dictionary 1334 (6th ed. 1990). Similarly, the word “urban” means “[o]f or belonging to a city or town. Within city limits.” Black’s Law Dictionary 1540 (6th ed. 1990).¹⁴

It is therefore my opinion that the terms “rural” and “urban” relate to whether the property is within or without the limits of an incorporated city, and do not relate to the zoning or land use of the property in question.

Similarly, in this case, since the Legislature chose to use the words “all rural areas” in N.D.C.C. § 43-18-10 and did not define the terms, the analysis in N.D.A.G. 94-L-223 is

for the purpose of enforcing health ordinances and regulations and police ordinances and regulations adopted for the general welfare of the city. Cities also have extraterritorial zoning authority under N.D.C.C. § 40-47-01.1, ranging from one to four miles depending on the population of the city. It is my understanding that the Board primarily considered the extraterritorial zoning authority of a city in its interpretation, and this opinion, consequently, primarily deals with the extraterritorial zoning authority of a city under N.D.C.C. § 40-47-01.1.

¹¹ See, e.g., Go Committee v. City of Minot, 701 N.W.2d 865, 871 (N.D. 2005).

¹² N.D.C.C. § 1-02-02.

¹³ Subsequent to the issuance of N.D.A.G. 94-L-223, and consistent with that opinion, the Legislature codified the definition of “rural” in N.D.C.C. § 15.1-09-04(3), relating to school board composition, to mean “outside the limits of an incorporated city.”

¹⁴ See also The American Heritage Dictionary 1079 (2d coll. ed. 1991) (rural means “[o]f or pertaining to the country as opposed to the city”).

pertinent and would indicate that “all rural areas,” as used in the statute, relate to whether the property is within or without the limits of an incorporated city and do not relate to the zoning of land or use of the property in question. Moreover, there does not appear to be any textual support for the Board’s interpretation that rural areas exclude areas subject to extraterritorial zoning authority of a city. This is especially true since the Legislature utilized the word “all” before the phrase “rural areas.”

In addition, municipalities have been given the authority under state law to regulate plumbing installation under N.D.C.C. § 40-05-01(25). The governing body of a municipality has the power to adopt ordinances dealing with plumbers and plumbing businesses and may “adopt, by ordinance, if it has a system of waterworks or sewerage, rules and regulations governing plumbing, drainage, and ventilation of plumbing within the limits of the municipality.”¹⁵ Thus, it would appear that a city’s authority over plumbing and plumbers ends at the city limits.¹⁶

Adopting the Board’s interpretation of the phrase “all rural areas” may also lead to anomalous results. For example, although the Board has not interpreted or implemented the statute in this manner, under the Board’s construction of it, a journeyman plumber could engage in the business of installing plumbing in a city of less than 1,000 population. But if that city had exercised its extraterritorial one-mile zoning authority under N.D.C.C. § 40-47-01.1(1), the same licensed journeyman plumber could not engage in the business of installing plumbing outside the city limits within the one-mile extraterritorial zoning jurisdiction. This result would be contrary to the presumptions that in enacting a statute a just and reasonable result is intended and a result feasible of execution is intended.¹⁷

While the Board’s interpretation of the exception contained in N.D.C.C. § 43-18-10 is plausible and has some intuitive appeal, I must, nevertheless, respectfully disagree and conclude that the term “all rural areas” as used in N.D.C.C. § 43-18-10 means all land outside a city’s territorial limits, including nearby land within a city’s extraterritorial zoning jurisdiction, and thus, a licensed journeyman plumber may engage in the

¹⁵ N.D.C.C. § 40-05-01(25) (emphasis supplied).

¹⁶ Several opinions from this office have, however, indicated that a city may apply and enforce its fire prevention code and building code in unincorporated territory within the city’s extraterritorial zoning jurisdiction if those provisions are lawfully adopted as ordinances under the city’s zoning authority. See, e.g., N.D.A.G. 98-F-18 (and opinions cited therein). These opinions, however, have not gone so far as to specifically extend regulation of plumbers and plumbing to a city’s extraterritorial zone by adopting plumbing regulation ordinances under its zoning authority.

¹⁷ See N.D.C.C. § 1-02-38(3) and (4).

LETTER OPINION 2006-L-31
September 20, 2006
Page 5

installation of plumbing in any area outside the limits of an incorporated city, including in the area of a city's extraterritorial zoning jurisdiction.

Consequently, it is my opinion that the term "all rural areas" as used in N.D.C.C. § 43-18-10 means all land outside a city's territorial limits, including nearby land within a city's extraterritorial jurisdiction.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg

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 question presented is decided by the courts.¹⁸

¹⁸ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).