

**OPINION
49-157**

December 12, 1949 (OPINION)

PLUMBING

RE: Interpretation and Definition

In your letter of November 9, 1949, you request, "an opinion from your office at your convenience pertaining to the State Plumbing Law, Chapter 43-18, R.C. 1943."

You then state, "We are in the process of printing a new Plumbing Code and it is possible we may make some changes from the present one. We are anxious to know if it may be possible to include water softeners, storage heaters, dish washing sinks, etc., as plumbing."

When we discussed this matter with you personally you requested that we also consider automatic laundries in our opinion.

Section 43-1801 (4) N.D.R.C. 1943, defines the term "plumbing" as follows:

* * *

4. 'Plumbing' shall mean the act of installing in buildings the pipes, fixtures, and other facilitating apparatus for bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom;
* * *."

Section 43-1809 provides that:

The board shall formulate, prepare, and circulate among all plumbers within this state, a state plumbing code, which shall contain the minimum basic standards for plumbing, drainage, and ventilation of plumbing in buildings of all classes. Such code shall be approved by the state department of health. The provisions of said code shall have the force and effect of law, and any violation thereof shall constitute a violation of this chapter."

It is apparent, therefore, that if the term "plumbing" as defined in section 43-1801 (4), supra, includes the act of installing storage heaters, dish washing sinks, automatic laundries, water softeners, etc., that in such case you have the authority, under section 43-1809, to include these items in your plumbing code.

You appreciate, of course, that in any interpretation of a statute, such as the one under consideration, regard must be had to the power which was exercised by the legislature when it passed the statute.

It is fundamental that every person has the right to engage in whatever occupation or business suits his fancy, subject only to reasonable regulation in the interest of the public health, safety, or welfare. The power to regulate, in the interest of the public

health, safety, or welfare, certain occupations and businesses, such as plumbing, is known as the police power. The regulation permissible under the police power, however, must bear a reasonable relation to the end sought to be attained. That is, it must be shown that the regulations are for the protection of the health, safety or welfare of the public.

We believe that section 43-1801 (4), supra, should be read as setting forth three separate and distinct tests for determining the pipes, fixtures, and other facilitating apparatus, which are to be considered as plumbing. These tests are:

1. For bringing water into buildings;
2. Using the same in buildings; and
3. For removing liquids and water-carried wastes therefrom.

We must now determine whether or not the installation of the various apparatus which you have requested an opinion on are properly subject to regulation under the statutory tests set out above, and whether this regulation may be considered to be a valid exercise of the police power.

We think that the automatic laundries and the dish washing sinks may be considered together, as there is no substantial difference between them in their relation to plumbing. Both are facilitating apparatus for using water in buildings, and when connected with the hot and cold water pipes become an integral part of the water system. Both have drainage pipes which lead directly into the main drainage system and become a part thereof, and in this respect they are not different from the ordinary sink.

Each of these two items, therefore, meet the tests numbered 2 and 3 above, and for that reason are within the definition of "plumbing" as set forth in the statute.

Inasmuch as both the laundry and sink use very hot water during their operation and because one of the inherent functions of each is to carry off waste waters we can readily see that the improper installation of these two items might affect adversely the public health and safety.

For these reasons it is our opinion that you have the authority to include dish washing sinks and automatic laundries within your proposed new plumbing code.

The water storage heater being interposed between the source of water as it enters the building and the pipes which distribute the hot water throughout the building, it would seem to us to be facilitating apparatus for bringing (hot) water into the building. At any rate, it can be classed as facilitating apparatus for using the water once it is in the building, and as such it comes within the second test of the definition of plumbing.

Because of the fact that it is possible for the storage heater to generate sufficient steam pressure to explode itself, we appreciate

that improper installation should be guarded against in the interest of the public safety and welfare.

It is our opinion, therefore, that you may also include water storage heaters in your proposed new plumbing code.

As to the water softeners, even if we should agree that they come within one or more of the tests set out in the statute, we are unable to perceive in what manner their installation would affect the health, safety, or welfare of the public. They do not carry off any waste water; there is no danger of explosion from them; they contain no harmful chemicals.

We do not believe that the legislature intended to exercise its police power in regard to this type of equipment by requiring that their installation be regulated the same as in the case of equipment which might prove a menace to the public health, safety, or welfare.

It is our opinion that you may not, for the reasons expressed, include water softeners in your proposed new plumbing code.

WALLACE E. WARNER

Attorney General