

**OPINION  
52-133**

April 10, 1952 (OPINION)

PLUMBING

RE: Plumbing Board - Rules Re Examinations

Your letter of March 28, 1952 requests an opinion from this office on the following question:

"Does the State Plumbing Board have the authority to establish a time limitation within which an applicant, who has been given permission to take a state plumbing examination, must appear for the writing of the examination?"

In considering chapter 43-18 of the North Dakota Revised Code of 1943 it is readily apparent that the State Plumbing Board is given broad authority for promulgating rules and regulations to carry out the intent and provisions of the act. Section 43-1308 sets forth the duties of the board, one of which is to "prescribe rules and regulations not inconsistent with the provisions of this chapter for the examination, regulation and licensing of plumbers, either as master plumbers, journeyman plumbers or both." The question, therefore, is whether a regulation adopted by the board to establish a time limitation would be considered to be inconsistent with the provisions of chapter 43-18.

Section 43-1813 of the North Dakota Revised Code of 1943 sets forth the procedure for making application to the State Plumbing Board and provides in part, "The applicant shall present himself at the next regular meeting of the board for examination of applicants." We believe the language used in this section is clear on the question as to when an applicant shall take the examination and the time limitation is in effect provided in the law itself.

It is therefore our opinion that such a regulation would definitely not be inconsistent with the provisions of the chapter. It is also our opinion that the law is sufficiently clear in itself as to when the examination must be taken and that a regulation could be prepared and adopted that would make the provision workable and effective. This opinion should not be construed to be a blanket approval of such rules as no specific regulation has been presented to this office for an opinion as to its legality. However, it is our opinion that based upon the reasoning as set forth above the board has the necessary authority to adopt a suitable regulation such as is apparently contemplated.

You also state that if it is possible, the board would like to inform applicants who have failed to appear for writing the examination at the specified time that they must appear for the examination writing on or before a certain date or else forfeit their examination privilege.

It is our opinion that the examination fee is not to be considered as

a deposit but that it is a payment for the privilege of taking the examination at the next regular meeting of the State Plumbing Board as provided in the Code and such payment is absolute and not conditional. There is no Code provision for refund of this fee should the applicant fail to qualify for a license or should the applicant fail to take the examination at the appointed time.

Section 43-1807 governs the disposition and use of all fees and contains no implication or provision that fees received are conditional or are to be held in abeyance pending future developments. It is therefore our opinion that such fees are to be deposited with the state treasurer upon receipt and there is no question of forfeiture involved. If the board feels an applicant has presented reasons acceptable to the board for being unable to take the examination at the appointed time, we see no reason why the board would not be able to refund the fees in such instances at the request of the applicant. We would, however, suggest that in the future a suitable agreement be entered into at the time of application which would provide that should the applicant not take the examination at the appointed time or fail to qualify after taking the examination, it would be mutually understood he would have no future claim for a refund. This should be done by regulation and appropriate provision in the application to prevent possible misunderstanding or future controversy.

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