

**OPINION
53-98**

May 4, 1953 (OPINION)

PLUMBING

RE: Conflict - City and State Regulations

It has been brought to our attention that a certain amount of confusion exists as to the effect of the state plumbing code in cities or village which have adopted municipal plumbing codes. Somecity attorneys, it appears, have taken the view that the state code has no application in municipalities having plumbing codes of their own adoption.

To clarify any misunderstanding in this regard, we herewith set out our thinking on this subject at the request of the State Plumbing Board.

The state plumbing code has been promulgated under the provisions of section 43-1809 of the North Dakota Revised Code of 1943, which provides that this code when duly adopted shall have the force of law in this state. Charged with the enforcement of this code is the State Plumbing Board.

Cities, on the other hand, which have adopted municipal codes, are empowered to do so under section 40-0501 (25), which reads as follows:

"PLUMBERS AND PLUMBING BUSINESS. To 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. The standards provided for in such ordinance, however, shall not be lower than the minimum standards provided for in any state plumbing code adopted pursuant to chapter 18 of the title Occupations and Professions, but may be higher than each standards. It may prescribe rules and regulations for all materials, constructions, alteration and inspection of pipes, tanks, and fixtures by which water is supplied to the citizens of the municipality, or by which waste or sewage is carried, and may provide that such pipes, tanks, and fixtures shall not be placed in any building in the municipality except in accordance with plans which are approved under the provisions of said ordinance, and that no plumbing shall be done except by a property owner on his own premises which are occupied as his home or place of residence. The ordinance may provide that all work done by an owner upon his own premises must comply with the provisions of the state plumbing code or local ordinance, whichever shall prescribe the highest standards. Before the municipality may require a plumber to be licensed by the municipality, it shall provide standards for plumbing a municipality equal to or in excess of those provided by the state plumbing code. A municipality may adopt the state plumbing code as a whole as an ordinance of the municipality by

reference without the necessity of publishing the text therefor."

It is true, of course, that a municipality, being a creature of the Legislature, possesses only those powers granted to it by the Legislature. See, for example, *Lang v. City of Cavalier*, 59 N.D. 75, 228 N.W. 819, and other cases there cited. There is, therefore, no power, inherent or otherwise, which would authorize the adoption of a municipal plumbing code otherwise than as provided by section 40-0501 (25).

Your attention is consequently directed to the second sentence of this statute which specifically provides that the municipal code may require higher, but not lower, standards than are required under the state plumbing code. The same is said to be true with reference to the requirements for licensing plumbers.

We are, therefore, of the opinion that insofar as a city, by ordinance, has adopted standards lower than the state plumbing code requirements, such standards contravene the express provisions of section 40-0501 (25) and the state plumbing board may take any action necessary to enforce compliance with its standards promulgated pursuant to section 43-1809, notwithstanding the fact that the alleged violation takes place in a city which has adopted a municipal plumbing code.

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