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December 29, 2000

FILE # ML-41818-00

I.D. # 71818

Ms. Susan D. Gusky
Chair, Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RECEIVED

JAN 05 2001

OPINION COMMITTEE

RQ-0333-JC

Re: Request for Formal Attorney General Opinion

Dear Ms. Gusky:

On behalf of the Texas State Board of Plumbing Examiners, I am requesting a formal opinion from the Office of the Attorney General on the requirements of TEX. REV. CIV. STAT. ANN. ART. 6243-101, the Plumbing License Law, regarding Licensed Plumbing Inspectors and plumbing inspections performed by, or on behalf of political subdivisions.

The Plumbing License Law contains three sections that address plumbing inspections and plumbing inspectors. Section 2(5) defines a plumbing inspector as follows:

" 'Plumbing Inspector' means any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board."

Section 14(a) contains prohibitions against any person acting or serving as a plumbing inspector, unless licensed as such. Section 14(a) is stated in pertinent part as follows:

"No person, whether as a master plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act. . ."

Section 15(a) of the Plumbing License Law requires cities with a population of more than 5,000 inhabitants to provide for inspections of the construction and alteration of all plumbing. Section 15(a) is stated as follows:

"Every city in this state of more than five thousand (5,000) inhabitants shall, and any city or town of this state may, by ordinance or by law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other fixtures by and through which a supply of water, gas or sewage is used or carried; and provided that they shall not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no plumbing shall be done except in case of repairing of leaks, without a permit being first issued therefor upon such terms and conditions as such city or town shall prescribe; provided that no such ordinance, by-law, rule or regulation prescribed by any such city or town shall be inconsistent with this Act, or any rule or regulation adopted or prescribed by the State Board of Plumbing Examiners."

The Board is asking the following questions:

1. Would a contractual relationship between the Licensed Plumbing Inspector and the city or other political subdivision, suffice for the "employed by a political subdivision" requirement of Section 2(5) of the Plumbing License Law, where the contract stipulates that:
 - a. the Licensed Plumbing Inspector is paid only by the city or other political subdivision and;
 - b. the Licensed Plumbing Inspector is an independent contractor or agent secured by the city or other political subdivision to perform plumbing inspections and enforce the city's or other political subdivision's adopted plumbing code?

2. May a Licensed Plumbing Inspector perform plumbing inspections for a city or other political subdivision, if the Licensed Plumbing Inspector is not an employee or agent of a city or other political subdivision, but simply "approved" by the city or political subdivision to make plumbing inspections and;
 - (a) where the Licensed Plumbing Inspector is engaged by the building or plumbing contractor whose work is to be inspected and;
 - (b) where the fee for the plumbing inspection is negotiated with and paid by the aforementioned contractor to the Licensed Plumbing Inspector or private inspection company or corporation that is employing the Licensed Plumbing Inspector to perform plumbing inspections?

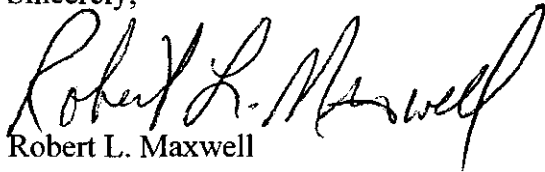
3. Does a city or other political subdivision have the legal authority to delegate its governmental function (authority) to inspect construction work and building components (plumbing, electrical, air conditioning, etc.) within the jurisdictional limits of the city or political subdivision, to individuals, companies or corporations which are not employees or agents of the city or political subdivision, but are:
 - (a) simply "approved" by the city or political subdivision to perform the inspections, and (b) where the approved individuals, companies or corporations are engaged by the contractors whose work is being inspected and;
 - (c) the fees for the inspections are negotiated with and paid by the aforementioned contractors to the individuals, companies or corporations performing the inspections?

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The Board's attorney, Mr. Robert Seibert, an Assistant Attorney General, is very familiar with this matter and may be reached at (512) 475-1556.

Thank you for your consideration of this matter and if I may clarify the Board's request, please do not hesitate to contact me at 458-2145, extension 233.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Maxwell". The signature is written in black ink and is positioned above the printed name and title.

Robert L. Maxwell
Administrator

xc: TSBPE Members
Robert Seibert, Assistant Attorney General