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JUL 25 2001

OPINION COMMITTEE

July 20, 2001

RQ-0406-JC

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

FILE # ML-42079-01  
I.D. # 42079

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 regarding new legislation affecting TEX. REV. CIV. STAT. ANN. ART. 6243-101, the Plumbing License Law, specifically concerning plumbing codes, Licensed Plumbing Inspectors and plumbing inspections performed by, or on behalf of political subdivisions. The new legislation in question, passed by the 77<sup>th</sup> Legislature, is contained in SB 365, HB 1505 and HB 217. SB 365 was signed by the Governor on May 15, 2001. HB 1505 was signed by the Governor on June 11, 2001. HB 217 was signed by the Governor on June 14, 2001 and was the last of the three bills to be passed. Since most of the provisions of the bills in question become effective September 1, 2001, and affect many cities and individuals, a response to this request received by that date or as soon as possible would be very much appreciated.

I.

QUESTION 1

Under the newly enacted legislation affecting the Plumbing License Law, if a jurisdiction such as an owner of a public water system, a municipality, municipal utility district or other political subdivision chooses to adopt the Uniform Plumbing Code or the International Plumbing Code, what plumbing code applies to residential one and two-family dwellings within the adopting jurisdiction?

**A. Current Law:**

The current law regarding the adoption of plumbing codes is contained in Section 5B of the Plumbing License Law. Section 5B applies to all plumbing work, both residential and nonresidential. Attorney General Opinion number JC-0012 has previously addressed the interpretation of this Section. Section 5B states:

"Sec. 5B. (a) to protect the health and safety of the citizens of this state, the Board shall adopt the Southern Standard Plumbing Code, the Uniform Plumbing Code, and the National Standard Plumbing Code.

(b) In adopting plumbing standards for the proper design, installation, and maintenance of a plumbing system, a municipality or an owner of a public water system may adopt standards that do not substantially vary with rules or laws of this state."

**B. SB 365:**

SB 365 did not amend the Plumbing License Law. SB 365 amends Chapter 214 of the Local Government Code and requires the use of the International Residential Code as the code to be used by municipalities in the state. The International Residential Code contains requirements for most all aspects of residential construction, including requirements for plumbing. Hence, as its name indicates, the International Residential Code, as it concerns plumbing work in Texas, would only apply to residential plumbing work. SECTION 1, of SB 365 states, in relevant part:

"SUBCHAPTER G. BUILDING CODES

Sec. 214.211. DEFINITIONS. In this subchapter:

(1) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings promulgated by the International Code Council . . .

(3) "Residential" means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

Sec. 214.212. INTERNATIONAL RESIDENTIAL CODE.

(a) To protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2001, is adopted as a municipal residential building code in this state.

(b) The International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality.

(c) A municipality may establish procedures:

- (1) to adopt local amendments to the International Residential Code; and
- (2) for the administration and enforcement of the International Residential Code . . ."

**C. HB 1505:**

It appears that SECTION 6 of HB 1505 conflicts with SB 365. It is important to note that SECTION 6 of HB 1505 did not amend Section 5B(a) of the Plumbing License Law, which left intact the same three plumbing codes currently allowed for use in the Plumbing License Law. HB 1505 did amend Section 5B(b) of the Plumbing License Law. SECTION 6 of HB 1505 states, in relevant part:

"SECTION 6. Section 5B(b), The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In adopting a plumbing code for the proper design, installation, and maintenance of a plumbing system, a municipality or an owner of a public water system may adopt a code that does not substantially vary with rules or laws of this state."

**D. HB 217:**

HB 217 also amends Section 5B of the Plumbing License Law and appears to conflict with SB 365 and HB 1505. HB 217 eliminates the Southern Standard Plumbing Code and the National Standard Plumbing Code from the law, and keeps the Uniform Plumbing Code and adds the International Plumbing Code as the two plumbing codes for the state. SECTION 3, of HB 217 states, in relevant part:

"Sec. 5B. ADOPTION OF PLUMBING CODES.

(a) To protect the health and safety of the citizens of this state, the Board shall adopt the following plumbing codes, as those codes existed on May 31, 2001:

(1) the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the International Plumbing Code, as published by the International Code Council.

(b) The Board may by rule adopt later editions of the plumbing codes listed under Subsection (a) of this section.

(c) Plumbing installed in an area not otherwise subject to regulation under this Act by a person licensed under this Act must be installed in accordance with a plumbing code adopted by the Board under Subsection (a) or (b) of this section.

(d) In adopting plumbing codes and standards for the proper design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state."

SECTION 4, of HB 217 states:

"SECTION 4. Plumbing installed in a jurisdiction that has adopted the Southern Standard Plumbing Code or the National Standard Plumbing Code may continue to be installed in compliance with the applicable code until the jurisdiction chooses to adopt a new code allowed under this Act."

SECTION 5, of HB 217 states:

"SECTION 5. (a) Except as provided by Subsection (b), this Act takes effect September 1, 2001, and applies to the design, inspection, installation, or maintenance of a plumbing system performed on or after that date. The design, inspection, installation, or maintenance of a plumbing system performed before that date is governed by the law in effect on the date that the design, inspection, installation, or maintenance occurred, and the former law is continued in effect for that purpose."

The International Plumbing Code and the International Residential Code are published by the same entity. The International Plumbing Code applies to all plumbing applications, including commercial and industrial. Additionally, the International Plumbing Code contains added language that requires the use of the International Residential Code for one and two-family dwellings. Regarding the adoption of plumbing codes, only this portion of HB 217 appears to be in harmony with SB 365. Section 101.2 of the International Plumbing Code states, in relevant part:

"Scope . . . Detached one- and two-family dwellings . . . shall comply with the "*International Residential Code*".

However, as it concerns plumbing requirements for residential one and two-family dwellings, HB 217 appears to conflict with SB 365 by including the Uniform Plumbing Code as an option for municipalities. The Uniform Plumbing Code is published by a different entity than the International codes and contains different requirements for the installation of plumbing. The Uniform Plumbing Code applies to all plumbing applications and has no special provisions for residential one and two-family dwellings. Section 101.4 of the Uniform Plumbing Code states, in relevant part:

"Scope . . . The provisions of this Code shall apply to the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction . . ."

**In summary**, it appears that HB 217 would control over HB 1505 and SB 365, since HB 217 was the last of the three bills signed by the Governor and it specifically amends Section 5B of the Plumbing License Law. Further, it appears that the Uniform Plumbing Code will apply to all plumbing applications (including one and two-family residential dwellings), within a jurisdiction (city, town, municipality, etc.) that adopts the Uniform Plumbing Code. Additionally, it appears that within a jurisdiction that adopts the International Plumbing Code, the International Residential Code will apply to one and two-family dwelling applications.

## II.

### QUESTIONS 2 AND 3

#### Question #2:

Under the newly enacted legislation affecting the Plumbing License Law, will each organized city, town, village, municipality, municipal utility district or other political subdivision in the state be required to either employ or contract with a licensed plumbing inspector who is paid directly by the political subdivision?

#### Question #3:

Under the newly enacted legislation affecting the Plumbing License Law, will each organized city, town, village, municipality, municipal utility district or other political subdivision in the state be required to adopt a plumbing code?

#### **A. HB 217:**

In addition to the language previously quoted from HB 217, HB 217 amends Section 5B of the Plumbing License Law by adding Subsection (e), which states:

"(e) Plumbing installed in compliance with a code adopted under Subsection (a), (b), or (d) of this section must be inspected by a plumbing inspector. To perform this inspection, the political subdivision may contract with any plumbing inspector paid directly by the political subdivision. The plumbing inspector must be licensed as required by Section 14(a) of this Act."

Further, when harmonized, HB 217 and HB 1505 amend Section 2(5) of the Plumbing License Law to read as follows:

"(5) "Plumbing Inspector" means any person who is employed by a political subdivision, or who contracts as an independent contractor with a political subdivision, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

In addition to the language previously quoted from HB 217, HB 217 amends Section 3(a) of the Plumbing License Law to require only licensed plumbers (unless otherwise exempted by the Plumbing License Law) to install all plumbing work that is within the limits of any organized city, town or village and all plumbing work connected to a public water system located anywhere in the state. HB 217 eliminated the Board's old jurisdiction limit, found in Art. 6243-101§3(a)(2), which gave the Board jurisdiction over organized cities, towns and villages of 5000 or more inhabitants.

Section 3(a) is amended to read, in relevant part:

"... (a) The following acts, work and conduct shall be expressly permitted without a license:  
... (2) Plumbing work done on a property that is:  
... (B) not connected to a public water system; and  
(C) located outside the municipal limits of any organized city, town or village in this state. . ."

In reading all of the previously quoted sections of HB 217, it appears that:

- (1) all plumbing work performed within any city town or village in this state or any plumbing work connected to a public water system must be performed by a licensed plumber (unless otherwise exempted by the Plumbing License Law);
- (2) all plumbing work installed by a licensed plumber must be installed in compliance with a plumbing code adopted either by the Board, an owner of a public water system, or an organized city, town or village, a municipality, municipal utility district or other political subdivision;
- (3) all plumbing work installed by a licensed plumber within the jurisdiction of a municipality, municipal utility district or other political subdivision must be inspected by a licensed plumbing inspector to ensure compliance with a state plumbing code; and therefore
- (4) each organized city, town, village, municipality, municipal utility district or other political subdivision must either employ or contract with a licensed plumbing inspector who is paid directly by the political subdivision.

**B. Current Law:**

However, in the previously stated regard, HB 217 appears to conflict with the current Section 15(a) of the Plumbing License Law. Current Section 15(a) allows, but does not require a city or town in this state of 5,000 or less inhabitants to adopt a plumbing code or provide for plumbing inspections. Current Section 15(a) states:

"Sec. 15. (a) 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, bylaw, 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."

**C. HB 1505:**

The earlier passed HB 1505 amended Section 15(a), but did not address the existing exemption for smaller cities. Section 15(a) is amended by HB 1505 to read as follows:

"Sec. 15. (a) 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, water heaters, and other fixtures by and through which a supply of water, gas or sewage is used or carried. In a city or town subject to this subsection, all plumbing inspections must be performed by a licensed plumbing inspector. A pipe, faucet, tank, valve, water heater, or other fixture may not be placed in any building except in accordance with such rules and regulations. No plumbing shall be done except the repairing of leaks, without a permit being first issued upon such terms and conditions as such city or town shall prescribe. 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 Board."

**In summary**, it appears that compliance with the language in the current and unamended portion of Section 15(a), (regarding the exemption for smaller cities), would conflict with and prevent compliance with the newly amended provisions of Section 3(a) from HB 217. Further, it appears that HB 217 would control over the existing language in Section 15(a) and render the language regarding the exemption for smaller cities meaningless. Hence, it appears that each organized city, town, village, municipality, municipal utility district or other political subdivision in the state will be required to adopt a plumbing code and either employ or contract with a licensed plumbing inspector who is paid directly by the political subdivision.

The Board's attorney, Mr. Robert Seibert, 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,



Robert L. Maxwell  
Administrator

xc: TSBPE Members  
Robert Seibert, Assistant Attorney General