



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

ATTORNEY GENERAL OPINION NO. 86-8

To: Gary Gould, Director  
Department of Labor and Industrial Services

STATEHOUSE MAIL

Per Your Request For Attorney General's Opinion

QUESTION PRESENTED:

You have asked whether the plumbing division of the State Department of Labor and Industrial Services has the authority to issue plumbing permits to nonlicensed individuals or firms, other than those identified in Section 54-2602 (a), (b), (c) and (d), Idaho Code and, if so, how such permits should be issued.

CONCLUSIONS:

1. The plumbing division of the State Department of Labor and Industrial Services has authority, pursuant to chapter 26 of title 54 of the Idaho Code, to issue plumbing permits to nonlicensed individuals or firms when necessary to protect the public health and safety.

2. The process for issuing such permits is within the discretionary powers of the board as the board shall establish by exercise of its rulemaking powers.

ANALYSIS:

The question presented involves an apparent conflict between the license and permit provisions of the Plumbing Act in chapter 26 of title 54 of the Idaho Code.

The licensing provisions are set forth in Idaho Code §§ 54-2608 through 54-2618 and provide a system of competency certificates progressing from plumbing apprentice to plumbing journeyman to plumbing contractor. Idaho Code § 54-2611. It is unlawful to engage in plumbing unless one has a certificate of competency (license). Idaho Code § 54-2610. Idaho Code § 54-2602 provides exemptions from this licensing requirement in seven limited situations, which may be described in shorthand form as follows:

- (a) owners doing plumbing work in single or duplex family dwellings;
- (b) farm buildings outside city limits;
- (c) logging, mining or construction camps;
- (d) piping systems in industrial processing plants outside city limits;
- (e) on-premise plumbing system work by employers who employ their own maintenance or construction plumbers;
- (f) sewer contractors, sewage disposal contractors, or excavating or utility contractors and their employees;
- (g) water treatment installation and repairs on residential or business premises.

Thus, the licensing provisions are clear. Persons who perform plumbing work must be licensed except in these seven situations.

The conflict arises in trying to dovetail these clear licensing provisions of Section 54-2602 with the equally clear permit provisions of Section 54-2620. That section makes it unlawful for anyone to do:

[a]ny construction, installation, improvement, extension or alteration of any plumbing system in any building, residence or structure, or service lines thereto, in the state of Idaho, without first procuring a permit from the department of labor and industrial services authorizing such work to be done, ...

Again, there are exceptions. However, the exceptions to the permit requirements in Section 54-2620 do not perfectly parallel the exceptions to the licensing requirements in Section 54-2602. The best way to resolve the conflicts is to walk through the exceptions one at a time.

The easiest cases are the three situations outlined in Idaho Code § 54-2602(b), (c) and (d). As noted earlier, these deal with farm buildings outside city limits; logging, mining or constructions camps; and piping systems in industrial processing plants outside city limits. Persons working on such projects do not need to be licensed plumbers. Such projects are also expressly exempted from plumbing job permit requirements. See, Idaho Code § 54-2620(b). Thus, no conflict or confusion occurs in these three situations because all such projects are exempt from both the licensing and permit requirements.

There is likewise no difficulty in construing subsection (a) of Idaho Code § 56-2602 which governs persons doing their own work in family dwellings. Such persons do not need plumbing licenses. They do need permits under Section 54-2620, but that section expressly provides for issuing permits "to a person who does his own work in a family dwelling as defined in § 54-2602(a)."

The most problematic situations are those outlined in Idaho Code § 54-2602(e), (f) and (g). Persons working on projects encompassed by these three subsections are exempted from plumbing licensing requirements. However, the projects themselves are not exempted from plumbing permit requirements.

The conflict arises because plumbing permits can only be issued to persons holding a valid plumbing license. A vicious circle results: The three categories are exempt from licenses,

but need permits, but cannot get the permits because permits can only be issued to valid license holders.

Closer analysis yields answers to some, but not all, of these situations.

In the case of water treatment installations and repairs, the general conflict is resolved by the specific provisions of Idaho Code § 54-2602(g). That subsection sets forth a separate inspection process for projects of this type:

[w]hen installed, repaired or completed, [these projects] shall be inspected by a designated, qualified and properly identified agent of the department of labor and industrial services as to quality of workmanship and compliance with the applicable provisions of this act.

The wording here is identical to the generic inspection provisions of Idaho Code § 54-2624. Thus, the public interest is fully protected by the separate inspection provisions of Idaho Code § 54-2602(g) and there is no need to resort to the general permit provisions of Idaho Code §§ 54-2620 to 54-2627. The public health and safety is further protected by surety bond provisions in the same subsection of the code.

There is also little real conflict between the licensing and permitting requirements with regard to sewer contractors, sewage disposal contractors and excavating or utility contractors, listed in Idaho Code § 54-2602(f). Persons engaged in these professions are separately and expressly exempted from the "certificate of competency" (license) requirements of Idaho Code § 54-2610. These same individuals benefit further from the express treatment provided in Section 54-2602(f):

Nothing contained in this section or any other provision of this code shall be construed or applied to require a sewer contractor, sewage disposal contractor, or any excavating or utility contractor ... to obtain a valid contractor's certificate of competency ... . (emphasis added)

The legislative intent is absolutely clear. Members of this category need not be licensed for any purpose whatsoever.

The permit provisions of the code could not possibly be used to override this strong expression of legislative intent. It is our opinion, therefore, that with respect to the class of contractors in Section 54-2602(f), the department would have to waive the requirement of Section 54-2620 that permits be issued only to persons holding valid licenses. The department would, however, retain its duty to inspect the work such individuals perform and to insure compliance with appropriate plumbing codes.

The final category is even more problematic. Idaho Code § 54-2602(e) provides that no license is needed by persons who "work on plumbing systems on premises owned or operated by an employer who regularly employs maintenance or construction plumbers,." This exemption from the licensing requirements was enacted in 1963. Idaho Session Laws, chapter 138.

The same bill that exempted such persons from licensing requirements struck down the permit exemption that had been enjoyed by workers in a previous subsection (e) category. Id. This was a strong indication that the legislature expressly intended to bring these projects within the permit requirements of what is now Idaho Code § 54-2620. This reading is bolstered by the fact that the same legislature also expressly provided in Idaho Code § 54-2602(e) that "alterations, extensions and new construction shall comply with the minimum standards, rules and regulations applicable to plumbing practices provided by this act."

The board can carry out its duties either by waiving the requirement that permits be issued only to licensed plumbers for projects of this type or by issuing permits in the name of a representative of the firm doing the work, who will be responsible for supervising the work.

Neither approach is very satisfactory. Either would require that the board engage in rulemaking pursuant to Idaho Code § 54-2605.

We suggest, rather, that the board attempt to amend the code at the next legislative session in a way that comports both

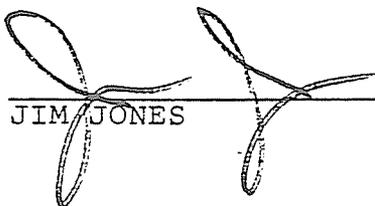
with the legislative intent that certain types of work may be done by unlicensed individuals and that work be done in accordance with the applicable plumbing codes. Our office is available to assist in reviewing any such proposed legislative revision.

AUTHORITIES CONSIDERED:

Idaho Code § 54-2601, et seq.

DATED this 12<sup>th</sup> day of August, 1986.

Attorney General  
State of Idaho

  
JIM JONES

Analysis by:

JOHN J. MCMAHON  
Chief Deputy Attorney General

cc: Idaho Supreme Court  
Supreme Court Library  
Idaho State Library