

January 31, 2005

Charles Clock, Chairman, Electrical Section
Kenneth Tucker, Chairman, HVAC/Refrigeration Section
Herman Bohinc, Chairman, Plumbing/Hydronics Section
Ohio Construction Industry Licensing Board
6606 Tussing Road
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SYLLABUS:

2005-005

1. Because the statutory scheme for the licensing of specialty contractors is a general law for purposes of Ohio Const. art. XVIII, § 3, and because a municipal regulation that prohibits a specialty contractor licensed under R.C. Chapter 4740 from acting as a contractor in his licensed trade on a construction project in that municipality without passing an examination given by the municipality conflicts with that statutory scheme, municipalities do not possess authority to adopt such a regulation.
2. A municipality that has adopted a charter under authority of Ohio Const. art. XVIII, § 7 has no authority to enact a regulation requiring a specialty contractor licensed under R.C. Chapter 4740 to pass a municipal examination or to furnish references before acting as a specialty contractor in his licensed trade on a construction project within the municipality.



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OPINION NO. 2005-005

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Kenneth Tucker, Chairman, HVAC/Refrigeration Section
Herman Bohinc, Chairman, Plumbing/Hydronics Section
Ohio Construction Industry Licensing Board
6606 Tussing Road
Reynoldsburg, Ohio 43068

Dear Chairmen Clock, Tucker, and Bohinc:

You have submitted a request for an opinion concerning certain changes made by Sub. S.B. 179, 125th Gen. A. (2004) (eff. Sept. 16, 2004), in the licensing of contractors in the electrical, HVAC (heating, ventilating, and air conditioning), and refrigeration trades. You specifically ask:

1. May a municipal corporation require a licensed electrical, HVAC, or refrigeration contractor to take a local test to work on a construction project in that municipality?
2. If a municipal corporation does not have such authority, may a home-rule charter municipal corporation require a contractor who holds a valid license pursuant to R.C. Chapter 4740 to take a local examination or provide character references?

For the reasons that follow, we find that a municipality does not have statutory authority to require an electrical, HVAC, or refrigeration contractor licensed under R.C. Chapter 4740 to take a local test before acting as a contractor in his licensed trade on a construction project within that municipality. Moreover, the home rule powers vested in a municipality by article XVIII, § 3 of the Ohio Constitution, whether or not the municipality has adopted a charter, do not include the authority to require any such licensed contractor to pass an examination or to furnish references in order to act as a contractor in his licensed trade on a construction project within that municipality.

Because your questions concern the authority of contractors who are licensed under R.C. Chapter 4740 to act, within the limits of municipalities, as contractors on construction projects in

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the trades for which they have been licensed under R.C. Chapter 4740, we will begin with a brief review of the licensing scheme established by R.C. Chapter 4740.

The General Assembly created the Ohio Construction Industry Licensing Board within the Department of Commerce. R.C. 4740.02. The Board consists of four sections: administrative, plumbing, electrical, and HVAC and refrigeration. *Id.* Each section, other than the administrative section, has certain responsibilities with respect to the regulation of contractors¹ in one of the enumerated trades.² Pursuant to R.C. 4740.05(A), each section, other than the administrative section, is required to adopt rules establishing, among other things, criteria for the qualification of applicants for licensure, and “[c]riteria for the section to use in deciding whether to authorize the administrative section to issue, renew, suspend, revoke, or refuse to issue or renew a license.” The administrative section of the Board then has the responsibility, in accordance with the rules each trade section has established, to “issue, renew, suspend, revoke, or refuse to issue or renew licenses for the classes of contractors for which each

¹ For purposes of R.C. Chapter 4740, the word “contractor” means:

any individual or business entity that satisfies both of the following:

(1) For compensation, *directs, supervises, or has responsibility* for the means, method, and manner of construction, improvement, renovation, repair, testing, or maintenance *on a construction project* with respect to one or more trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or business entity is permitted or qualified to perform, direct, supervise, or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project;

(2) *Performs or employs tradespersons* who perform construction, improvement, renovation, repair, or maintenance *on a construction project* with respect to the contractor’s trades.

R.C. 4740.01(B) (emphasis added). *See generally* R.C. 4740.01(E) (as used in R.C. Chapter 4740, the term “construction project” means “a construction project involving a building or structure subject to [R.C. Chapter 3781 (building standards)] and the rules adopted under that chapter, but not an industrialized unit as defined in [R.C. 3781.06] or a building or structure constructed pursuant to rules adopted under [R.C. 3781.181 or R.C. 3781.21]”).

² Pursuant to R.C. 4740.02, the plumbing section has primary responsibility for the licensing of plumbing contractors and hydronics contractors, the electrical section has primary responsibility for the licensure of electrical contractors, and the heating, ventilating, air conditioning, and refrigeration section has primary responsibility for the licensure of heating, ventilating, and air conditioning contractors and refrigeration contractors.

has primary responsibility.”³ R.C. 4740.05(B). R.C. 4740.06(C) imposes additional duties upon the Board’s administrative section to issue a license to any qualified person who meets the criteria set forth in R.C. 4740.06(B) and who successfully completes an examination. A contractor who possesses a license issued under R.C. Chapter 4740 may then represent himself as, or act as, a contractor on a construction project in the trade for which he is licensed.⁴

Your questions concern the authority of a municipality to require a contractor who has been licensed under R.C. Chapter 4740 successfully to complete a municipal competency test or to provide references before acting as a contractor in the trade for which he is licensed on a construction project within that municipality. The regulation by local authorities of the trades mentioned in R.C. Chapter 4740 is addressed, in part, by R.C. 4740.12, which states:

Nothing in this chapter shall be construed to limit the operation of any statute or rule of this state or any *ordinance or rule of any political subdivision*, district, or agency of the state that does either of the following:

(A) Regulates the *installation, repair, maintenance, or alteration* of plumbing systems, hydronics systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;

³ In 1999-2000 Ohio Laws, Part II, 3840 (Am. Sub. H.B. 434, eff. Sept. 18, 2001), the General Assembly significantly amended and restructured the statutory scheme governing the licensing and regulation of contractors in the construction trades. Of particular significance to your question is Am. Sub. H.B. 434’s transfer from municipalities and counties to the Ohio Construction Industry Examining Board (now the Ohio Construction Industry Licensing Board) of the power to license specialty contractors, as now defined in R.C. 4740.01(B), who work on construction projects, as now defined in R.C. 4740.01(E). As explained in uncodified section 6(B) of Am. Sub. H.B. 434, it was the General Assembly’s intent, in part, “[t]hat the provisions of this act eliminate duplicative bureaucracies to create a system under which an affected contractor may obtain a single license to permit the contractor to do business in all parts of this state.” The changes made by Am. Sub. H.B. 434 established the basic scheme that is currently in effect.

⁴ R.C. 4740.13(A) states: “No person shall act as or claim to be a type of contractor that this chapter licenses unless that person holds or has been assigned a license issued pursuant to this chapter for the type of contractor that person is acting as or claiming to be.” *See generally* R.C. 4740.99 (making a violation of R.C. 4740.13(A) “a minor misdemeanor on the first violation and a misdemeanor of the fourth degree on subsequent violations”).

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(B) Requires the *registration* and assessment of a *registration or license fee of tradespersons*⁵ who perform heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance. (Emphasis and footnote added.)

R.C. 4740.12 thus specifies those powers reserved to political subdivisions, including municipalities, and other public entities with respect to (1) the manner of installation, repair, maintenance, or alteration of plumbing systems, hydronics systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems,⁶ and (2) the registration and fee requirements applicable to tradespersons performing those trades within the local jurisdiction. R.C. 4740.12 is silent, however, with respect to local regulations requiring contractors licensed under R.C. Chapter 4740 to pass examinations or otherwise prove their competency in order to act as such on construction projects within the local jurisdictions.

As mentioned in your opinion request, R.C. 715.27 grants municipalities certain authority with respect to those involved in the heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, and hydronics trades, in part, as follows:

(A) Any municipal corporation *may*:

...

(3) Provide for the *licensing* of house movers; plumbers; sewer tappers; vault cleaners; and *specialty contractors*⁷ *who are not required to hold a valid license issued pursuant to [R.C. Chapter 4740]*.

⁵ As used in R.C. Chapter 4740, the term “tradesperson” means: “an individual who, for compensation, engages in construction, improvement, renovation, repair, or maintenance of buildings or structures *without assuming responsibility* for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance.” R.C. 4740.01(D) (emphasis added).

⁶ See *Tradesmen International, Inc. v. City of Massillon*, No. 2002CA00251, 2003 Ohio App. Lexis 2272 (Stark County May 12, 2003), ¶ 15 (“a municipal corporation has some authority to regulate how electrical work is done”).

⁷ See generally R.C. 715.27(G) (“[a]s used in this section, ‘specialty contractor’ means a heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor, as those contractors are described in [R.C. Chapter 4740]”).

It is our understanding that there are contractors in the same trades as those licensed under R.C. Chapter 4740, who perform the functions described in R.C. 4740.01(B), but who perform those functions elsewhere than on “construction projects,” and are not, therefore,

(4) Require all specialty contractors *other than those who hold a valid license issued pursuant to [R.C. Chapter 4740]*, to successfully complete an examination, test, or demonstration of technical skills, and *may* impose a *fee* and *additional requirements* for a license or registration to engage in their respective occupations within the jurisdiction of the municipal corporation.

(B) *No municipal corporation shall* require any specialty contractor who holds a valid license issued pursuant to [R.C. Chapter 4740] *to complete an examination, test, or demonstration of technical skills* to engage in the type of contracting for which the license is held, within the municipal corporation.

(C) *A municipal corporation may* require a specialty contractor who holds a valid license issued pursuant to [R.C. Chapter 4740] *to register* with the municipal corporation and *pay any fee* the municipal corporation imposes before that specialty contractor may engage within the municipal corporation in the type of contracting for which the license is held. Any fee shall be the same for all specialty contractors who engage in the same type of contracting. A municipal corporation may require a bond and proof of all of the following:

- (1) Insurance pursuant to [R.C. 4740.06(B)(4)];
- (2) Compliance with [R.C. Chapter 4121 and R.C. Chapter 4123];
- (3) Registration with the tax department of the municipal corporation.

If a municipal corporation requires registration, imposes such a fee, or requires a bond or proof of the items listed in divisions (C)(1), (2), and (3) of this section, the municipal corporation immediately shall permit a contractor who presents proof of holding a valid license issued pursuant to [R.C. Chapter 4740], who registers, pays the fee, obtains a bond, and submits the proof described under divisions (C)(1), (2), and (3) of this section, as required, to engage in the type of contracting for which the license is held, within the municipal corporation. (Emphasis and footnote added.)

Thus, R.C. 715.27(A)(3) authorizes a municipality to require a specialty contractor who is not subject to licensure under R.C. Chapter 4740, *see generally* note seven, *supra*, to obtain a municipal license before engaging in contracting within the municipality. R.C. 715.27(A)(4) grants additional authority to a municipality to require a specialty contractor who is not licensed under R.C. Chapter 4740, to provide proof of competency in the specialty trade, to pay a fee, and

contractors who are required to be licensed under R.C. Chapter 4740. For ease of discussion, this opinion will use the term “specialty contractors” to refer to individuals who act as contractors in the heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, and hydronics trades, whether or not they fit within the definition of “contractor” set forth in R.C. 4740.01(B), *i.e.*, act as contractors on construction projects.

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to meet additional licensing or registration requirements before acting as a specialty contractor within the jurisdiction of the municipality.

Although R.C. 715.27(B) expressly prohibits a municipality from requiring a specialty contractor who *is* licensed under R.C. Chapter 4740 to pass an examination or otherwise to prove his competence in his licensed trade as a prerequisite to acting as a contractor in his licensed trade on a construction project within that municipality, R.C. 715.27(C) authorizes a municipality to require such licensees to register and pay a fee before “engag[ing] in the type of contracting for which the license is held, within the municipal corporation.” In addition, R.C. 715.27(C) directs that once a licensed specialty contractor complies with any requirements imposed upon him by a municipality in accordance with R.C. 715.27(C), the municipality has a duty to allow the licensee to “engage in the type of contracting for which the license is held, within the municipal corporation.” *See Tradesmen International, Inc. v. City of Massillon*, No. 2002CA00251, 2003 Ohio App. Lexis 2272 (Stark County May 12, 2003), ¶ 21 (“pursuant to R.C. 715.27, as long as a state licensed electrical contractor meets the administrative and fee requirements delineated in R. C. 715.27, the municipality must allow that electrical contractor to work within the municipality”).

The limited authority granted to municipalities by R.C. 715.27(A)(4) to impose competency requirements only upon specialty contractors “other than those who hold a valid license issued pursuant to [R.C. Chapter 4740],” coupled with the prohibition in R.C. 715.27(B) against a municipality’s imposition of testing or other “demonstration of technical skills” upon specialty contractors licensed under R.C. Chapter 4740, makes it clear that R.C. 715.27 confers no authority upon a municipality to require specialty contractors licensed under R.C. Chapter 4740 to pass an examination or otherwise to demonstrate their competency in their licensed trades before being permitted to act as contractors in their licensed trades on construction projects within that municipality. *See generally State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) (“[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court’s only task is to give effect to the words used”); *Cline v. Ohio Bureau of Motor Vehicles*, 61 Ohio St. 3d 93, 96, 573 N.E.2d 77 (1991) (“[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation”).

Bearing in mind the broad statutory framework for the licensing and registration of specialty contractors, we turn now to your first question which asks whether a municipality may, pursuant to its home rule powers, require specialty contractors who are licensed under R.C. Chapter 4740 to complete an examination or to provide references in order to conduct their business within the municipality.

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A similar question was recently addressed in 2003 Op. Att’y Gen. No. 2003-011, which explained the effect of a municipality’s home rule powers upon the state scheme for the licensing of emergency medical service organizations, in part, as follows:

Pursuant to the Ohio Constitution, municipal corporations have authority “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const. art. XVIII, § 3. This home rule provision permits a municipal corporation to adopt ordinances that provide for the self-government of the municipality. *See generally Village of Beachwood v. Bd. of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958) (syllabus, paragraph one) (“[t]he power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality”). *The home rule provision of Ohio Const. art. XVIII, § 3 also permits a municipality to enact local police regulations, provided that the police regulations do not conflict with general laws of the state. Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph one) (“[m]unicipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws”).

Licensing requirements have been found to constitute police regulations. The Ohio Supreme Court has recognized that the power to license is part of the power to regulate and has concluded that “any municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation within the meaning of Section 3 of Article XVIII of the Ohio Constitution.” *Auxter v. City of Toledo*, 173 Ohio St. 444, 446, 183 N.E.2d 920 (1962); *see also Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 244, 602 N.E.2d 1147 (1992). Therefore, a municipal corporation may adopt licensing requirements, provided that the licensing requirements do not conflict with general laws of the state. (Emphasis added; footnote omitted.)

2003 Op. Att’y Gen. No. 2003-011 at 2-82 to 2-83. Thus, a municipality’s authority under Section 3 of Article XVIII of the Ohio Constitution to exercise its home rule powers includes the authority to adopt police regulations, including occupational licensing requirements, so long as such regulations do not conflict with general laws of the state.

Because the statutory scheme for the licensing of specialty contractors is an exercise of the state's police power,⁸ whether a municipality may, under its home rule powers, impose the requirements you describe upon specialty contractors licensed under R.C. Chapter 4740 depends upon whether the statutory scheme for the licensing of specialty contractors falls within the category of "general laws" for purposes of Ohio Const. art. XVIII, § 3,⁹ and, if so, whether the type of municipal regulation you describe conflicts with the statutory scheme for the licensing of specialty contractors. If the answer to either question is in the negative, then the enactment of such regulation falls within a municipality's home rule powers for purposes of Ohio Const. art. XVIII, § 3, and prevails over the conflicting statute. *See generally Village of Linndale v. State*, 85 Ohio St. 3d 52, 53, 706 N.E.2d 1227 (1999) ("a municipality's police regulation must yield to the state's general police regulation when the two conflict. If, however, [a statute] is not a law applying to citizens generally, but an attempt to limit the powers of a municipal corporation to adopt or to enforce police regulations, it must be struck down as unconstitutional").¹⁰

The nature of "general laws" for purposes of Ohio Const. art. XVIII, § 3 was recently considered by the Ohio Supreme Court in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (2002). The *City of Canton* court began by explaining that "general laws are enacted by the General Assembly 'to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state.'" *City of Canton v. State*, ¶ 13 (quoting *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 82-83, 187 N.E. 158 (1929)). The court then reviewed the various tests it has used over the years to determine whether particular legislation was a "general law" for purposes of Ohio Const. art. XVIII, § 3, and formulated the following four-part test:

⁸ *See Village of Linndale v. State*, 85 Ohio St. 3d 52, 53, 706 N.E.2d 1227 (1999) ("a municipality's police regulation must yield to the state's general police regulation when the two conflict"); *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986) (syllabus, paragraph four) ("[w]here state laws and municipal ordinances concerning the monitoring of hazardous waste landfill facilities located within the corporate limits of the city do not conflict, the state and municipality have concurrent authority under their respective police powers to enforce their respective directives within the corporate limits of the city").

⁹ *See City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (2002), ¶ 18 (it is appropriate to "view statutory schemes in their entirety, rather than a single statute in isolation" to determine whether the statutes form a statewide and comprehensive legislative scheme, one of the requirements of a general law).

¹⁰ As otherwise explained by the court in *City of Canton v. State*, ¶ 9: "[a] state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law."

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To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

City of Canton v. State (syllabus).

Under the first part of the *City of Canton* test, we must determine whether the statutory scheme for the licensing and regulation of specialty contractors is a statewide and comprehensive legislative enactment. As explained above, the statutory scheme for the licensure of specialty contractors requires anyone within the state who intends to hold himself out as, or to act as, a specialty contractor subject to licensure under R.C. Chapter 4740 to obtain a license from the Ohio Construction Industry Licensing Board. See R.C. 4740.13(A) (note four, *supra*). The licensure of all specialty contractors within a specific trade are subject to a uniform set of standards, including the criteria set forth in R.C. 4740.06 and the requirements adopted by the section of the Ohio Construction Industry Licensing Board having responsibility for that trade. R.C. 4740.05(A)(1).¹¹ Retention of such a license is also governed by uniform standards adopted by the relevant section of the Board. *Id.*

The statutory scheme for the licensure of specialty contractors also addresses the manner in which and the extent to which municipalities, among others, may regulate specialty contractors, whether licensed or unlicensed, who wish to conduct business within such local jurisdictions. See, e.g., R.C. 715.27(A)(3) (authorizing a municipality to provide for the licensing of specialty contractors who are not required by R.C. Chapter 4740 to be licensed); R.C. 715.27(B) (“[n]o municipal corporation shall require any specialty contractor who holds a valid license issued pursuant to [R.C. Chapter 4740] to complete an examination, test, or demonstration of technical skills to engage in the type of contracting for which the license is held, within the municipal corporation”); R.C. 715.27(C) (authorizing a municipality to require a specialty contractor licensed under R.C. Chapter 4740 to pay a fee and register, among other

¹¹ See generally, e.g., R.C. 4740.05(A)(1) (authorizing each trade section of the Ohio Construction Industry Licensing Board to adopt rules limited to: “(a) [c]riteria for the section to use in evaluating the qualifications of an individual; (b) [c]riteria for the section to use in deciding whether to authorize the administrative section to issue, renew, suspend, revoke, or refuse to issue or renew a license; (c) [t]he determinations and approvals the section makes under the reciprocity provision of [R.C. 4740.08]”).

things, before engaging in his licensed trade within that municipality);¹² R.C. 715.27(F) (“[a] municipal corporation shall not register a specialty contractor who is required to hold a license under [R.C. Chapter 4740] but does not hold a valid license issued under that chapter”).¹³

It is readily apparent, therefore, that the statutory scheme for the licensing of specialty contractors is a thorough and detailed legislative scheme designed to protect the public health and safety by providing for the licensure of specialty contractors who have proven their competence, in accordance with a uniform set of standards applicable to all contractors in that specialty trade, to engage in their licensed trades on construction projects throughout the state. We conclude, therefore, that the statutory scheme for the licensing of specialty contractors establishes a comprehensive statewide system of regulation of specialty contractors, and, as such, satisfies the first part of the *City of Canton* test for a general law.

The second part of the *City of Canton* test requires the statutory licensing scheme to apply to all parts of the state alike and to operate uniformly throughout the state. We first note that the statutory scheme for the licensure of specialty contractors applies to all specialty contractors throughout the state who wish to hold themselves out as, or act as, specialty contractors on construction projects anywhere within the state. *See* 4740.13. The exceptions provided for within this scheme, such as the powers granted to municipalities and counties by R.C. 715.27 and R.C. 3781.102, apply uniformly to all municipalities and counties throughout the state in the regulation of specialty contractors.¹⁴ It appears, therefore, that the statutory

¹² *Cf. Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 602 N.E.2d 1147 (1992) (syllabus) (“[a] municipal ordinance which attempts to exact a fee for the registration or licensure of private investigators, security guard providers or their employees constitutes a local police regulation. Where the fee provision in such ordinance conflicts with the statewide regulatory program established pursuant to R.C. Chapter 4749 and, specifically, the prohibition against the imposition of such fees contained in R.C. 4749.09, it is rendered invalid by operation of Section 3, Article XVIII of the Ohio Constitution”).

¹³ The statutory scheme for the licensure of specialty contractors includes similar provisions concerning the authority of counties with respect to specialty contractors. *See, e.g.*, R.C. 3781.102(B) (in part, authorizing a county to adopt rules “establishing standards and providing for the licensing of electrical and heating, ventilating, and air conditioning contractors who are not required to hold a valid and unexpired license pursuant to [R.C. Chapter 4740]”); R.C. 3781.102(D) (in part, authorizing a county to require licensed specialty contractors to register and pay a fee before acting as a contractor in his licensed trade within certain parts of the county).

¹⁴ The fact that municipalities and counties have authority to regulate certain aspects of the practice of these specialty trades, R.C. 715.27; R.C. 3781.102, does not prevent the statutory

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scheme concerning the licensure of specialty contractors meets the second part of the *City of Canton* test for general laws.

The third part of the *City of Canton* test for general laws requires the law to “set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.” *City of Canton v. State*, (syllabus). As discussed above, a statutory scheme for the licensing of an occupation is a police regulation. *Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245. Thus, the statutory scheme for the licensure of contractors, as defined in R.C. 4740.01(B), in the specialty trades you describe is an exercise of the state’s police power.

Also included within this statutory licensing scheme is the establishment of a state board with responsibility for the licensure of specialty contractors in accordance with standards promulgated by the various trade sections within that board. *See* R.C. 4740.05(A)(1) (note eleven, *supra*). *See generally* R.C. 4740.02 (note two, *supra*). Among the responsibilities of the various sections is the duty of each trade section to “establish or approve a continuing education curriculum for license renewal for each class of contractors for which the section has primary responsibility,” R.C. 4740.05(C), and to “[i]nvestigate allegations in reference to violations of this chapter and the rules adopted pursuant to it that pertain to the section and determine by rule a procedure to conduct investigations and hearings on these allegations,” R.C. 4740.05(A)(2). Thus, although the statutory scheme governing the licensure of specialty contractors does contain provisions that both grant and limit municipalities’ authority to regulate certain aspects of the practice of specialty contractors within their jurisdiction, the scheme also establishes a uniform system to protect the public health and safety through the state’s licensing of specialty contractors for work on construction projects. We conclude, therefore, that the statutory scheme for licensing specialty contractors meets the third part of the *City of Canton* test for general laws.

The final part of the test for determining whether the statutory scheme for the licensure of specialty contractors is a general law for purposes of Oho Const. art. XVIII, § 3, as described by the *City of Canton* court, is whether such statutory scheme “prescribe[s] a rule of conduct upon citizens generally.” In discussing the nature of this aspect of a general law, the *City of Canton* court cited a number of cases that found a statute not to be a general law if, instead of prescribing a rule of conduct upon citizens generally, the law served only to limit a municipality’s exercise of its powers. *See, e.g., Village of Linndale v. State* (statute prohibited law enforcement officials in localities meeting certain criteria from issuing excess weight and speeding tickets on interstate highway); *City of Youngstown v. Evans*, 121 Ohio St. 342, 168 N.E. 844 (1929) (statute

scheme from having a uniform application. Rather, such municipal and county authority, as part of the statutory scheme for the licensure of specialty contractors, authorizes any municipality or county in the state to legislate with respect to specific areas of the practice of contracting in these specialty trades.

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authorized municipalities to classify certain ordinance offenses as misdemeanors and limited the penalty municipalities could impose for such offenses). Ultimately, the *City of Canton* court found a statute that prohibited political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in a zone or district in which single-family homes are permitted, except when private landowners incorporate restrictive covenants in deeds to prohibit the inclusion of, among other things, manufactured homes “does not prescribe a rule of conduct upon citizens generally, because ... the statute applies to municipal legislative bodies, not to citizens generally.” *City of Canton v. State*, ¶ 36.

In contrast, the statutory scheme governing the licensing of specialty contractors applies to anyone in the state who seeks to act as a specialty contractor on a construction project, as defined in R.C. 4740.01(E), anywhere in the state. It also provides for the imposition of a single set of qualifications for specialty contractors who work on construction projects, and uniform criteria within each specialty trade for the issuance and retention of such licenses. The statutory scheme, therefore, appears to “prescribe a rule of conduct upon citizens generally” and thus meet the fourth part of the *City of Canton* test for general laws.

Having determined that the statutory scheme for the licensure of specialty contractors who work on construction projects is a “general law” for purposes of Ohio Const. art. XVIII, § 3, we must now consider whether a municipal requirement that a specialty contractor licensed under R.C. Chapter 4740 pass an examination as a prerequisite to acting as a specialty contractor on a construction project in that municipality conflicts with the statutory licensing scheme. If such a municipal requirement conflicts with the statutory scheme for the licensure of specialty contractors, a “general law,” the adoption of such requirement exceeds the municipality’s authority to exercise home rule under Ohio Const. art. XVIII, § 3. *See City of Canton v. State*, ¶ 9 (“[a] state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law”).

The court in *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph two), set forth the following test for determining whether an ordinance is in conflict with general laws: “whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” The municipal regulation you prescribe would prohibit a specialty contractor, although licensed under R.C. Chapter 4740, from acting as a contractor in his licensed trade on a construction project within the municipality unless the contractor also passed a municipal examination. R.C. 715.27(B), set forth above, however, expressly prohibits a municipality from imposing such a requirement upon specialty contractors who are licensed under R.C. Chapter 4740. It is clear, therefore, that any such regulation would conflict with the statutory scheme for the licensure of specialty contractors.

In answer to your first question, we conclude that, because the statutory scheme for the licensing of specialty contractors is a general law for purposes of Ohio Const. art. XVIII, § 3,

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and because a municipal regulation that prohibits a specialty contractor from acting as a contractor in his licensed trade on a construction project in that municipality without passing an examination given by the municipality conflicts with that statutory scheme, municipalities do not possess authority to adopt such a regulation.

Your second question asks whether a charter municipality may impose such a testing requirement upon, or require the furnishing of references by, specialty contractors licensed under R.C. Chapter 4740 in order to act as contractors on construction projects within that municipality. In order to answer this question, we must examine the effect of the adoption of a charter upon the powers of a municipality.

Pursuant to article XVIII, § 7 of the Ohio Constitution, “[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.” Article XVIII, § 7 thus limits the matters that a municipality may regulate to matters of local self-government and incorporates the portion of Ohio Const. art. XVIII, § 3 that empowers municipalities “to adopt and enforce within their limits” local police, sanitary and other similar regulations, to the extent those regulations are not in conflict with general laws. *Rispo Realty & Dev. Co. v. City of Parma*, 55 Ohio St. 3d 101, 102, 564 N.E.2d 425 (1990) (“[a] municipality that chooses to adopt a charter does so in order to manage its own purely local affairs without interference from the state, with the understanding that those local laws will not conflict with the constitution and general laws”).

Moreover, a municipality’s adoption of a charter does not expand its authority with respect to the enactment of police regulations. Rather, the state’s exercise of its police power in the enactment of general laws, such as the statutory scheme for the licensing of specialty contractors, prevails over a municipal regulation to the extent of any conflict, whether or not the municipality has adopted a charter. *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 66, 337 N.E.2d 766 (1975) (“[a] city may exercise the police power within its borders, but the general laws of the state are supreme in the exercise of the police power, regardless of whether the matter is one which might also properly be a subject of municipal legislation. Where there is a direct conflict, the state regulation prevails”).

Your specific concern is whether a charter municipality has authority to require a specialty contractor licensed under R.C. Chapter 4740 to complete an examination or to provide references prior to working as such contractor on a construction project within a municipality. As stated in response to your first question, the statutory scheme for the licensing of specialty contractors is a general law for purposes of Ohio Const. art. XVIII, § 3. Because a charter municipality has no greater authority in the exercise of a police power than has a non-charter municipality, we conclude that, just as a municipality has no authority pursuant to its home rule powers granted by Ohio Const. art. XVIII, § 3 to require a specialty contractor licensed under R.C. Chapter 4740 to complete an examination before acting as a contractor in his licensed trade

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on a construction project within the municipality, a charter municipality also has no such authority.

Part of your question is whether a charter municipality may adopt a regulation requiring a licensed specialty contractor to provide references before acting as a contractor in his licensed trade on a construction project within the municipality. Again, whether a municipality may adopt such a regulation depends upon whether such regulation would conflict with the statutory scheme governing the licensing of specialty contractors, a general law for purposes of Ohio Const. art. XVIII, § 3. The statutory scheme for the licensure of specialty contractors expressly prohibits a municipality from requiring “any specialty contractor who holds a valid license issued pursuant to [R.C. Chapter 4740] to complete an examination, test, or demonstration of technical skills to engage in the type of contracting for which the license is held, within the municipal corporation.” R.C. 715.27(B). R.C. 715.27(C) establishes the requirements a municipality may impose upon such a licensed contractor, including, among other things, registration, payment of a fee, and furnishing a bond. Moreover, R.C. 4740.12, which describes the types of municipal requirements with which R.C. Chapter 4740 will not interfere, sets forth only two areas: the manner of performing such specialty trades, and the imposition upon tradesmen of a registration and fee requirement. Nothing in the statutory scheme expressly addresses the furnishing of references as a prerequisite to being allowed to act as a specialty contractor on a construction project within a municipality.

As set forth in the syllabus of the *Sokol* case, whether a conflict exists between a general law and a municipal regulation depends upon “whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” Because the statutory scheme for the licensing of specialty contractors permits a licensed contractor to engage in his trade on a construction project without providing references, a municipal regulation imposing such a requirement would prohibit that which the statutory scheme permits. Such a requirement is, therefore, outside the scope of a municipality’s home rule powers. Thus, whether or not a municipality has a charter, it has no authority to require a specialty contractor licensed under R.C. Chapter 4740 to furnish references before acting as a specialty contractor in his licensed trade on a construction project within the municipality.

In answer to your second question, therefore, we conclude that a municipality that has adopted a charter under authority of Ohio Const. art. XVIII, § 7 has no authority to enact a regulation requiring a specialty contractor licensed under R.C. Chapter 4740 to pass a municipal examination or to furnish references before acting as a specialty contractor in his licensed trade on a construction project within the municipality.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Because the statutory scheme for the licensing of specialty contractors is a general law for purposes of Ohio Const. art. XVIII, § 3, and because a

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municipal regulation that prohibits a specialty contractor licensed under R.C. Chapter 4740 from acting as a contractor in his licensed trade on a construction project in that municipality without passing an examination given by the municipality conflicts with that statutory scheme, municipalities do not possess authority to adopt such a regulation.

2. A municipality that has adopted a charter under authority of Ohio Const. art. XVIII, § 7 has no authority to enact a regulation requiring a specialty contractor licensed under R.C. Chapter 4740 to pass a municipal examination or to furnish references before acting as a specialty contractor in his licensed trade on a construction project within the municipality.

Respectfully,

JIM PETRO
Attorney General