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AUTHORITY OF BOARD OF HEALTH OF GENERAL HEALTH DISTRICT TO REQUIRE REGISTRATION OF PERSONS ENGAGED IN PLUMBING IN DISTRICT AND TO CHARGE FEES FOR REGISTRATION—§§3707.01, 3709.21, R.C.—OAG 2760—1953  
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## SYLLABUS:

A board of health of a general health district has implied authority under Sections 3707.01 and 3709.21, Revised Code, to require the registration of persons engaged in the business of plumbing in the district, and to charge a reasonable fee for such registration.

Columbus, Ohio, June 14, 1960

Hon. Thomas A. Beil, Prosecuting Attorney  
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been asked by the general health district of this County to request your opinion on the following:

“Does the board of health of a general health district, under Sections 3707.01, 3709.21 and 3709.36, Revised Code, have either the expressed or implied power to enact rules and regulations for the *registering* of plumbers, and be so registered before engaging in the business of plumbing?”

“Would the health district be authorized to adopt a fee schedule and charge for such registration?”

Section 3707.01, Revised Code, which prescribes the powers of a board of health, reads in part :

“The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. It may, by order, compel the owners, agents, assignees, occupants, or tenants of any lot, property, building, or structure to abate and remove any nuisance therein, and prosecute such persons for neglect or refusal to obey such orders. Except in cities having a building department, or otherwise exercising the power to regulate the erection of buildings, *the board may regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and drains.* In cities having such departments or exercising such power, the legislative authority, by ordinance, shall prescribe such rules and regulations as are approved by the board and shall provide for their enforcement.

“\* \* \*” (Emphasis added)

Section 3709.21, Revised Code, relating to orders and regulations of a board of health of a general health district, reads in part :

“*The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. Such board may require that no human, animal, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch, or watercourse without a permit therefor having been secured from the board under such terms as the board requires. All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded, and certified as are ordinances of municipal corporations.\* \* \*.*” (Emphasis added)

Section 3709.36, Revised Code, reads as follows :

“The board of health of a city or general health district hereby created shall exercise all the powers and perform all the duties formerly conferred and imposed by law upon the board of health of a municipal corporation, and all such powers, duties, procedure, and penalties for violation of the sanitary regulations of a board of health of a municipal corporation are transferred to the board of health of a city or general health district by sections 2923.18, 3701.10, 3701.29, 3707.08, 3707.14, 3707.16, 3707.47, and 3709.01 to 3709.36, inclusive, of the Revised Code.”

Nowhere in the above-quoted sections, including those mentioned in Section 3709.36, *supra*, is there a specific provision which would au-

thorize a board of health of a general health district to adopt a rule providing for the registering of plumbers. It will be noted, however, that Section 3707.03, Revised Code, specifically authorizes the state department of health to require the registration of persons engaged in or at the plumbing business, such section reading in part:

“In the administration of sections 3703.01 to 3703.09, inclusive, of the Revised Code, the department of health may make and enforce rules and regulations governing plumbing and register those persons engaged in or at the plumbing business.

“\* \* \*”

Since a board of health of a general health district lacks specific authority to require the registration of plumbers, such authority must be reasonably implied if the board is to act in this field.

In the case of *Wetterer v. Bd. of Health*, 167 Ohio St., 127 (1957), the Supreme Court held:

“A board of health of a general health district has neither expressed nor implied power under Sections 3701.01, 3709.21 and 3709.36, Revised Code, to enact rules and regulations to provide for the licensing of plumbers in such general health district.”

While the court here ruled against the licensing of plumbers, it did not determine the question of the registration of plumbers. In the opinion by Herbert, J., however, this question was discussed, it being stated at pages 138 and 139:

“Both courts below held that a board of health of a general health district has the power to enact reasonable rules and regulations to provide for registration of plumbers. It might be cogently argued that this power is implied in the general authority of Section 3709.21, Revised Code. On the other hand, as noted above, the Legislature expressly granted the power to the state Department of Health in Section 3703.03, Revised Code. Upon the pleadings and the facts in this case the question does not arise as an issue and is, therefore, not considered or determined here.”

In Opinion No. 2760, Opinions of the Attorney General for 1953, page 264, it was held:

“The board of health of a general health district, under the provisions of Sections 1261-3 and 1261-42, General Code, is given by implication the power to require a license of persons who engage in the occupation of plumbing in such district.”

Although the conclusion of this opinion was overruled in the *Wetterer* case, *supra*, the reasoning with reference to implied powers of the board of health appears to be here pertinent. At page 266 of the opinion it is stated:

“It is generally held that local health authorities possess implied, as well as express powers and that the powers conferred on them by statute should be liberally construed. 20 Ohio Jurisprudence 557, Section 26; 39 Corpus Juris Secundum, 822, 823, Section 9. Moreover, in 53 Corpus Juris Secundum, 478, Section 10, we find the following statement:

“‘Unless some other provision of law forbids the exercise of the power to license, the power of a municipal corporation to license an occupation or privilege and impose a license fee or tax thereon is generally implied from power to regulate such occupation or privilege. \* \* \*.’”

At page 269, in referring to the cases of *Martin v. Bowling Green*, 12 Ohio Law Abs., 191 (6th District Court of Appeals, 1922) and *Harrison v. Rhodes, et al.*, (unreported decision of the Court of Common Pleas of Franklin County, No. 176570 (1952)), it is stated:

“It will be observed that in both the *Bowling Green* and the *Rhodes* cases, *supra*, the powers of a city board of health were under scrutiny. It is well settled, however, that city boards of health are agencies of the state and although municipalities, under their home rule powers, are authorized to enact local sanitary regulations not in conflict with the general laws, city boards of health, as distinguished from the municipal legislative authority, operate under a statutory grant of power. Accordingly, the decisions above noted holding that city boards of health possess the power to license by implication in the power to regulate, must be deemed to apply with equal force to boards of health of general health districts. This being so, and in view of the necessity of according a liberal construction to the statutes enumerating the powers of such boards, I am impelled to the conclusion that boards of health of general health districts may lawfully prescribe by regulation a requirement for the licensing of plumbers as a condition of carrying on their occupation in such districts.”

The reasoning of Opinion No. 2760, *supra*, was thoroughly considered in the *Wetterer* case, *supra*, but, as noted, that case held that a board of health did not have implied power to license plumbers. For me to find an implied power to register plumbers, as in the instant question, I must follow the same line of reasoning used in Opinion No. 2760, and am faced with the conclusion of the *Wetterer* case, *supra*, in this

regard. Moreover, as noted by Herbert, J., in that case, the legislature deemed it necessary to specifically grant the registration power to the state department of health (Section 3703.03, *supra*).

As noted earlier, Section 3707.01, *supra*, authorizes the board of health of a general health district to regulate the location, construction and repair of *plumbing*; and Section 3709.21, *supra*, authorizes such a board to make such orders and regulations as are necessary for the public health. While it is not specifically stated, I am constrained to the view that the board has implied authority under these sections to require the registration of persons engaged in the business of plumbing in the district and to charge a reasonable fee for such registration. I believe that the general authority to regulate plumbing and to make orders and regulations necessary for the public health authorizes such section by the board.

In arriving at the above conclusion, I am aware of the previously-noted fact that the legislature granted to the state department of health specific authority to register persons engaged in the plumbing business, in addition to granting general rule-making authority pertaining to plumbing to said department. This is, of course, evidence that the legislature thought it necessary to specifically grant the power to the department, however, I do not deem it absolutely determinative of the intent of the legislature in granting authority to a board of health of a general health district. Nor do I believe that the fact that the registration power is not specifically given to such a board should prevent the conclusion that such power may have been granted by implication.

While the court in the *Wetterer* case, *supra*, ruled against the authority of a board to require the licensing of plumbers, such ruling was not extended to the question of registering persons engaging in the plumbing business. Moreover, there is a great difference between the effect of a licensing regulation and a registration regulation. Under a licensing regulation a board of health might deny a license to operate to a person who had been engaged in the business of plumbing and dependent on it for his livelihood. Under a registration regulation the board would not be in a position to deny the right to engage in the business of plumbing where registration is made. Thus, where the court in the *Wetterer* case, *supra*, was loath to imply a licensing power, I do not believe that the decision in that case should be construed to deny a right to require registration as in the instant question.

In arriving at my conclusion herein, I wish to make it clear that I interpret "registration" to mean the mere listing of the names of persons who are engaging in the business of plumbing and that the regulation would not attempt to set up any qualifications for registration. That is, any person who wished to register could do so by merely asking that his name be put on the list and by paying the fee. Regarding a fee for registration, I believe that a reasonable fee could be charged and that a fee which would cover the costs involved would be reasonable.

Answering your specific question, it is my opinion and you are advised that a board of health of a general health district has implied authority under Sections 3707.01 and 3709.21, Revised Code, to require the registration of persons engaged in the business of plumbing in the district, and to charge a reasonable fee for such registration.

Respectfully,

MARK MCELROY

Attorney General