

OPINION NO. 66-172

Syllabus:

1. The prohibitions in Section 3703.07, Revised Code, concerning single or double residences is a prohibition solely against the State Department of Health, and when the entire section is incorporated by reference into the regulations of a General Health District, such restrictions are mere surplusage, and do not limit the regulatory powers of the General Health District.

2 Private individuals installing plumbing facilities in their own homes within a General Health District, need only obtain a permit, pay the necessary fees, and otherwise comply with the plumbing regulations adopted and being enforced by said General Health District.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: William B. Saxbe, Attorney General, October 27, 1966

I have before me your request for my opinion which reads as follows:

"A question has been referred to this office relative to Section 3703.07 of the Revised Code as the same applies to plumbing regulations adopted by the Licking County General Health District as to all unincorporated areas within Licking County, Ohio. The Licking County General Health District adopted the Ohio Plumbing Code by incorporation by reference on June 15, 1965, to become effective on July 1, 1965.

"The question in point is whether Section 3703.07 of the Revised Code completely removes jurisdiction from the Licking County General Health District to impose the regulations adopted upon single or double residences as set forth in Section 3703.07 of the Revised Code. The further question has also been raised as to an individual building his own home being required to secure a permit to do the plumbing in his own home, and if he shall be charged for the inspection thereof as set forth in the local regulations as follows: 'Each application to the Health Commissioner for a permit to do plumbing shall be accompanied by a fee of \$5.00 and an additional \$2.00 for each trap or vented fixture.'

"In other words is any individual who desires to build a home on land which he owns required to secure a permit to do so under the plumbing regulations of the local health district or is he completely exempt from said regulations under Section 3703.07 of the Revised Code."

Section 3703.07, Revised Code, to which you refer in your question, reads as follows:

"No plumbing work shall be done in any building or place coming within the jurisdiction of the department of health, except in cases of repairs or leaks in existing plumbing, until a permit has been issued by the department.

"The jurisdiction of the department shall not include plumbing in a single or double residence.

"Before granting such permit, an application shall be made by the owner of the property or by the person, firm, or corporation which is to do the work. Such application shall be made on a blank prepared by the department for the purpose, and each application shall be accompanied by a fee of three dollars, and an additional fee of one dollar for each trap or vented fixture. Such fees shall be paid into the state treasury and credited to the general revenue fund.

"Whenever a reinspection is made necessary by the failure of the applicant or plumbing contractor to have the work ready for inspection when so reported, or by reason of faulty or improper installation, such person shall pay a fee of ten dollars for each such inspection."

Section 3709.21, Revised Code, grants express authority to the General Health District to make rules and regulations protecting the public health. This section reads in part as follows:

"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.* * *"

In regard to the regulation of plumbing, the Attorney General said in Opinion No. 2760, Opinions of the Attorney General for 1953, at page 266:

* * * * *

"In view of this close relationship between this business and the public health, and in view of the broad statutory powers of boards of health in the promulgation of health measures, it can scarcely be doubted that such boards have the power to regulate the business of plumbing within their respective districts.

* * * * *

Thus it is clear that the legislature intended the General Health District to have certain police powers over the plumbing trade, in an effort to protect public health.

Chapter 3703, Revised Code, was enacted for the purpose of delineating the authority of the State Department of Health concerning plumbing. It is clearly stated in this Chapter that the State Department of Health shall not have any jurisdiction or authority in a situation such as your request outlines, that is, where a local health district has adopted and is enforcing regulations governing plumbing. This is made apparent from a reading of part of Section 3703.01, Revised Code:

* * * * *

"The department [of health] shall not exercise any authority in municipal corporations or other political subdivisions in which ordinances have been passed or resolutions or regulations have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof.

"Standards and methods prescribed in local plumbing regulations shall not be less than those prescribed in Chapters 3781., 3783., 3785., 3787., 3789., and 3791. of the Revised Code.

* * * * *

(Emphasis added)

This statute clearly provides that where a General Health District has adopted and is enforcing rules and regulations concerning the field of plumbing, then the State Department of Health is precluded from this area altogether.

Section 3703.07, supra, is a direction to the State Department of Health, and has no application to plumbing regulations adopted by the general health district of Licking County. The prohibition in that section concerning single or double residences is a prohibition against the State Department of Health, and since the State Department of Health has no jurisdiction in the Licking County general health district in this matter, such further restriction is merely surplusage, so far as the matter involved in your request is concerned.

Section 3703.01, supra, further states that local districts are not permitted to prescribe standards and methods of plumbing which are less than those prescribed in the several chapters of the Revised Code mentioned in such quotation. By inference, therefore, local districts are authorized to prescribe standards and methods of plumbing which are "greater", or are more restrictive, than those prescribed in the Revised Code.

Thus the prohibition in Section 3703.07, supra, concerning single or double residences is a prohibition directed solely against the State Department of Health. When the entire section is incorporated by reference into the regulations of a General Health District, such restrictions are mere surplusage, and do not limit the regulatory powers of the General Health District.

Considering now the next area of your question regarding fees and permits, Section 3709.22, Revised Code, sets out the duties of the board of health of a city or a general health district by saying in part:

"* * * The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.

"* * * * *"

When regulations are adopted providing for inspections, for the prevention and correction of health hazards, etc., it is self-evident that there will be costs of inspections to pay. Therefore, it becomes necessary and justified to charge a fee for said inspections.

Opinion No. 4380, Opinions of the Attorney General for 1941, page 886, states in its syllabus:

"District boards of health of general health districts may by order or regulation in the interest of public health or for the prevention or restriction of disease provide for the inspection of trailer camps and impose reasonable standards in connection therewith. The cost of such inspection and the issuance of a permit certifying that there has been compliance with the standards may be charged to the operators of said camps.

"* * * * *"
(Emphasis added)

"While the statute does not expressly authorize the board to charge a fee for the costs of inspection and the issuance of a permit certifying that there has been a compliance with the orders or regulations this authority is implied. * * *"
(Emphasis added)

This proposition is further enhanced by the fifth paragraph of the syllabus of McGowen v. Shaffer, 138 Ohio Law Abs., 65, which reads:

"5. Where authority is given the board of health of a general health district to regulate plumbing, it follows that to regulate they must inspect, and impliedly, the right to inspect gives the board the right to charge for that inspection."

(Emphasis added)

From the above quotation, it is apparent that the General Health District, having been given express authority to inspect, consequently has the implied authority to charge a fee in order to cover the expenses of such inspections.

Once the General Health District has been given authority to regulate, they have then been given the implied authority to license, as was pointed out in the second paragraph of the syllabus of McGowen v. Shaffer, supra:

"2. While under the Ohio statutes the boards of health of the general health districts are not expressly granted the right to license master plumbers and register journeymen for a fee, they have, by reason of the powers granted to them under said statutes, an implied authority to so license and register."

If, as is evident in the above discussion, the General Health District has the power and authority to charge fees for permits and inspections of a master plumber's work, it must follow that the same regulations, permits, and inspections necessary for professionals, are also necessary for a private individual installing plumbing facilities in his own dwelling. Local health authorities are held to possess implied powers as well as express powers, in conserving the public health and the powers conferred upon them by statute should be liberally construed. 20 Ohio Jurisprudence, 557.

Therefore, it is my opinion and you are hereby advised that:

1. The prohibitions in Section 3703.07, Revised Code, concerning single or double residences is a prohibition solely against the State Department of Health, and when the entire section is incorporated by reference into the regulations of a General Health District, such restrictions are mere surplusage, and do not limit the regulatory powers of the General Health District.

2. Private individuals installing plumbing facilities in their own homes within a General Health District, need only obtain a permit, pay the necessary fees, and otherwise comply with the plumbing regulations adopted and being enforced by said General Health District.