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1. EXAMINATION, INSPECTOR, STEAM BOILERS—PERSON WHO PASSED WRITTEN EXAMINATION, APPROVED BY INDUSTRIAL COMMISSION, GIVEN IN ANOTHER STATE, AND WHO HOLDS CERTIFICATE OF COMPETENCY, ENTITLED TO COMMISSION TO INSPECT BOILERS FOR STATE OF OHIO WITHOUT TAKING EXAMINATION PROVIDED FOR IN SECTION 1058-16 G. C.—DESIGNATION BY INSURANCE COMPANY, STATE OR MUNICIPALITY.
2. INDUSTRIAL COMMISSION MAY REQUEST SUBMISSION OF ALL EXAMINATION PAPERS, QUESTIONS AND ANSWERS, OR PHOTOSTATIC COPIES—MAY ADOPT RULE FIXING REQUIREMENT.
3. SUCH APPLICANT MAY NOT BE REQUIRED TO SUBMIT TO EXAMINATION IN THIS STATE, ORAL OR WRITTEN, OR BOTH, NOR MAY A RULE TO SUCH EFFECT BE ADOPTED BY COMMISSION.

SYLLABUS:

1. A person who has passed a written examination approved by the Industrial Commission, which was given in another state, and who holds a certificate of competency approved by the Industrial Commission which was issued to him by such other state is, upon being designated by either an insurance company authorized to insure boilers against explosion in this state, a state or municipality, entitled to a commission authorizing him to inspect boilers for the State of Ohio without taking the examination provided for in Section 1058-16, General Code.
2. In order to determine whether or not the written examination, taken by any such person in another state, should be approved by it, the Industrial Commission may request all examination papers of such examination, including the questions asked and the answers given, or photostatic copies thereof, to be submitted to it and may lawfully adopt a rule fixing such requirement.
3. The Industrial Commission may not, however, lawfully require an applicant for a commission authorizing him to inspect boilers for the State of Ohio, who has passed a written examination given in another state and who holds a certificate of competency issued by such other state, to appear before it and submit to an examination, oral or written, or both, in order to determine whether or not the examination taken by such applicant and the certificate of competency issued to him shall be approved, nor may a rule to such effect be lawfully adopted by the Industrial Commission.

Columbus, Ohio, May 17, 1946

The Industrial Commission of Ohio
Columbus, Ohio

Gentlemen:

Your request for my opinion reads:

"Your official opinion is requested on the following matter.

By virtue of Section 154-45, Ohio General Code, the Industrial Commission of Ohio is the successor to and exercises the powers and duties of the Board of Boiler Rules. Those powers and duties are set forth in Ohio General Code, Section 1058-7 to Section 1058-30, inclusive. Section 1058-17, Ohio General Code, as amended April 29, 1921, provides as follows:

'The chief inspector of steam boilers may with the consent of the governor, appoint from the holders of certificates provided for in Section 11, not to exceed ten general inspectors.

(Insurance. Special Inspectors.) Any company authorized to insure boilers against explosion in this state may designate from holders of certificates of competency approved by the Board of Boiler Rules persons to inspect boilers covered by such company's policies, and the chief inspector of steam boilers shall issue to such persons commissions authorizing them to act as special inspectors. Such special inspectors shall be compensated by the company designating them, and the fee provided for in Section 20 shall not be collected by such special inspectors.

(Commissions.) The chief inspector of steam boilers shall issue to each of such appointees, a commission to the effect that the holder thereof is authorized to inspect steam boilers for the State of Ohio.

No person shall be authorized to act for the state, either as a general inspector or a special inspector, unless he holds a certificate of having passed a written examination approved by the board of boiler rules, and also that he holds a commission from the chief inspector of steam boilers to represent the state in that capacity.'

It will be noted that Section 1058-17 prior to the amendment which became effective on October 8, 1945, provided for two kinds of boiler inspectors, to-wit: General inspectors in the employ of the State of Ohio who had passed the examination

provided for in Section 1058-16, Ohio General Code. Special inspectors who had passed a written examination approved by the Industrial Commission of Ohio and given in another state, were in the employ of an insurance company authorized to do business in the State of Ohio, whose certificate of competency had been approved by the Industrial Commission of Ohio and to whom had been issued a commission by the Division of Boiler Inspection, Department of Industrial Relations.

Effective October 8, 1945, Section 1058-17 of the Ohio General Code was amended by adding the following paragraphs:

'Any state or municipality may designate from holders of certificates of competency, approved by the Industrial Commission of Ohio, persons to inspect boilers during construction and distinctly stamp same under such rules as may be formulated by the Industrial Commission of Ohio provided said boiler conforms in every detail with said rules.

The Industrial Commission of Ohio may request all examination papers or photostatic copies thereof to be submitted to said Commission.'

The necessity for issuing Ohio Boiler Inspector's licenses to persons out of the State of Ohio is created by Section 1058-23, Ohio General Code, which provides in part as follows:

'No certificate of inspection shall be granted on any boiler installed after July 1, 1913, which has not been thoroughly inspected during construction, and upon completion, by either a general or special inspector and which does not conform in every detail with the rules formulated by the Board of Boiler Rules, * * *.'

The effect of the amendment to Section 1058-17, Ohio General Code, is to place responsibility on the Industrial Commission of Ohio to approve or reject certificates of competency in order that Ohio Boiler Inspector's licenses can be issued to state and municipal inspectors of states other than the State of Ohio and municipalities outside of the State of Ohio.

Under Section 1058-12, Ohio General Code, any person who desires an Ohio Boiler Inspector's Certificate of Competency must have five years experience in this field, provide a letter of recommendation from one or more of his previous employers, take a written examination which requires two days, make a passing grade of seventy per cent or better, and pay a fee of \$10.00.

Under authority of Section 871-22, paragraphs 3 to 8, the Industrial Commission of Ohio has adopted safety rules for the

construction of unfired pressure vessels, which said rules also require inspection by boiler inspectors.

With reference to the approval of certificates of competency of inspectors who have been examined in other states and municipalities by taking a written examination first approved by the Industrial Commission of Ohio the following rule has been suggested to the Industrial Commission of Ohio:

RULE GOVERNING APPROVAL OF CERTIFICATES OF COMPETENCY OF BOILER AND PRESSURE VESSEL INSPECTORS OF OTHER STATES AND MUNICIPALITIES FOR COMMISSIONS AS OHIO BOILER AND PRESSURE VESSEL INSPECTORS.

1. The board of Boiler Deputies acting for the Industrial Commission of Ohio hold regular quarterly meetings at Columbus, Ohio, on the first Wednesday in March, June, September and December of every year, at which time an examination for inspectors of steam boilers is conducted and any person who desires to qualify for a reciprocal commission to inspect boilers shall be given a hearing.

2. A person who applies for a reciprocal commission under the provisions of Section 1058-17 of the Ohio General Code is required to fill out complete, in duplicate, the application form supplied by the Board of Boiler Deputies, submit in duplicate photostatic copies of the certificate of competency issued by the state or municipality where the examination was held. These must be on file with the Industrial Commission of Ohio at the time of the hearing.

3. A person applying for a reciprocal commission is required to appear before the Board of Boiler Deputies, submit the examination questions, together with the applicant's answers or photostatic copies taken thereof to secure his present certificate of competency.

4. A person applying for a reciprocal commission shall answer any and all questions pertaining to age, education, character references, experience, engineering ability in the boiler and pressure vessel field and his knowledg of the regulations contained in the Ohio Boiler Inspection Law and Rules and the Rules for the Construction of Unfired Pressure Vessels of the Industrial Commission of Ohio. If deemed necessary the Board of Boiler Deputies may further test the applicant's ability.

5. The Board of Boiler Deputies shall carefully review the documentary records submitted and from the results disclosed

by these records and the hearing they shall advise by letter to the Industrial Commission of Ohio that they recommend the approval or disapproval of the examination questions and answers submitted by the applicant and recommend approval or disapproval of the issuance of a reciprocal commission.

Can this rule be adopted and used by the Industrial Commission of Ohio in ascertaining facts necessary for the approval of certificates of competency for the purpose of issuing Ohio Boiler Inspector's Commissions?

Can the Commission require these applicants from other states, and municipalities outside of the State of Ohio, who have otherwise complied with statutory requirements, to appear before the Commission or authorized deputies and submit to an examination, oral or written, or both, in order to determine whether or not it will approve their certificates of competency for the purpose of having issued to them an Ohio commission as a boiler inspector?"

In an opinion rendered by my predecessor on August 6, 1940, Opinions of the Attorney General for 1940, page 738, it was held:

"* * * A person who has passed a written examination approved by the Industrial Commission, which was given in another state, and who holds a certificate of competency approved by the Industrial Commission which was issued by such other state, is, upon being designated by an insurance company authorized to insure boilers against explosion in this state, entitled to a commission issued by the chief inspector of steam boilers, authorizing him to inspect boilers for the state of Ohio, without taking the examination provided for in Section 1058-16, General Code."

Section 1058-17, General Code, which deals with the issuance of commissions to inspect boilers for the State of Ohio to persons who have passed examinations given in other states and who hold certificates of competency issued by other states, reads as follows:

"The chief inspector of steam boilers may with the consent of the governor, appoint from the holders of certificates provided for in Section 1058-16 of the General Code, not to exceed ten general inspectors.

Any company authorized to insure boilers against explosion in this state may designate from holders of certificates of competency of other states, approved by the industrial commission of Ohio persons to inspect boilers covered by such company's pol-

icies, and the chief inspector of steam boilers shall issue to such persons commissions authorizing them to act as special inspectors. Such special inspectors shall be compensated by the company designating them, and the fee provided for in Section 1058-25 of the General Code shall not be collected by such special inspectors.

Any state or municipality may designate from holders of certificates of competency, approved by the industrial commission of Ohio, persons to inspect boilers during construction and distinctly stamp same under such rules as may be formulated by the industrial commission of Ohio provided said boiler conforms in every detail with said rules.

The Industrial Commission of Ohio may request all examination papers or photostatic copies thereof to be submitted to said commission.

The chief inspector of steam boilers shall issue to each of such appointees, a commission to the effect that the holder thereof is authorized to inspect steam boilers for the state of Ohio.

No person shall be authorized to act for the state, either as a general inspector or a special inspector, unless he holds a certificate of competency of having passed a written examination approved by the industrial commission of Ohio, and also that he holds a commission from the chief inspector of steam boilers to represent the state in that capacity."

By an amendment to the above section which became effective October 8, 1945, the provisions thereof were changed from those under consideration in the opinion above referred to by the addition of the third and fourth paragraphs as the same now reads.

Since no changes other than the one here noted have been effected in any of the statutes upon which the above stated conclusion was predicated, it would seem to follow that such conclusion should now be amended by including therein persons designated by states and municipalities, who have otherwise qualified.

The sole question then is, whether or not the Industrial Commission may by rule require applicants from other states and municipalities, who have otherwise complied with our statutory requirements and who are not required to take the examination prescribed in Section 1058-16 of the General Code, to submit to an examination in order to determine whether or not the certificates of competency held by such persons should be approved.

Section 871-22 of the General Code, which defines certain powers and duties of the Industrial Commission, provides in part:

“It shall also be the duty of the industrial commission, and it shall have full power, jurisdiction and authority: * * *

(7) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings * * *.”

Here is found authority for the Industrial Commission to adopt reasonable and proper rules relative to the exercise of its powers. Since Section 1058-17, General Code, in express terms, enjoins upon the Industrial Commission the duty of approving certificates of competency issued by other states and examinations given in other states, it would unquestionably follow that the Commission is clothed with ample authority to adopt rules and regulations pertaining to the discharge of such duty. In this regard, however, it must be borne in mind that such authority must be exercised within definite limitations. In other words, any rule adopted by the Commission under the powers conferred upon it must be within the policy of the law as declared by the General Assembly and within the standards established by that body.

A reading of Section 1058-17, General Code, discloses that the General Assembly has therein provided that the Industrial Commission may request all examination papers or photostatic copies thereof to be submitted to it. Here our law-making body, in plain terms, has declared its policy with respect to the extent to which the Commission may go in order to determine whether an examination given in another state or a certificate of competency issued in another state should be approved by it. Had the General Assembly intended that a person applying for a commission to inspect boilers for use in Ohio and who had passed an examination given in another state and holds a certificate of competency from such state should again be required to take an examination in Ohio, it might very well have so stated. Having failed to do so, it must be concluded that such requirement was not intended and, consequently, a rule of the Commission imposing the same would be invalid.

Furthermore, in Section 1058-8, General Code, it is provided that it shall be the duty of the Industrial Commission “to examine applicants

for certificates as boiler inspectors as hereinafter provided". The provisions of law referred to in said section are those set out in Section 1058-16, General Code, which deal with and prescribe the method of holding examinations in this state for inspectors of steam boilers.

That the General Assembly clearly intended to recognize examinations held in other states is manifest from the language of the amendment to Section 1058-17, General Code, which became effective in 1921 (109 O. L. 255). The last paragraph of said section, as it read prior to said amendment, was as follows:

"No person shall be authorized to act for the state, either as a general inspector or a special inspector, unless he holds a certificate of having passed the examination as herein provided, and also that he holds a commission from the chief inspector of steam boilers to represent the state in that capacity."

By deleting from the above paragraph the words "the examination as herein provided" and inserting in lieu thereof the phrase "a written examination approved by the Board of Boiler Rules" (now the Industrial Commission), it is clear that examinations other than those prescribed by Section 1058-16, General Code, should, if approved by the Industrial Commission, be regarded as testing an applicant's qualifications and, consequently, the authority granted to the Commission under Section 1058-8, General Code, to examine applicants for certificates as boiler inspectors must be confined to the examinations provided for in Section 1058-16, General Code.

Therefore, in specific answer to your questions you are advised that, in my opinion:

1. A person who has passed a written examination approved by the Industrial Commission, which was given in another state, and who holds a certificate of competency approved by the Industrial Commission which was issued to him by such other state is, upon being designated by either an insurance company authorized to insure boilers against explosion in this state, a state or municipality, entitled to a commission authorizing him to inspect boilers for the State of Ohio without taking the examination provided for in Section 1058-16, General Code.

2. In order to determine whether or not the written examination, taken by any such person in another state, should be approved by it, the

Industrial Commission may request all examination papers of such examination, including the questions asked and the answers given, or photostatic copies thereof, to be submitted to it and may lawfully adopt a rule fixing such requirement.

3. The Industrial Commission may not, however, lawfully require an applicant for a commission authorizing him to inspect boilers for the state of Ohio, who has passed a written examination given in another state and who holds a certificate of competency issued by such other state, to appear before it and submit to an examination, oral or written, or both, in order to determine whether or not the examination taken by such applicant and the certificate of competency issued to him shall be approved, nor may a rule to such effect be lawfully adopted by the Industrial Commission.

Respectfully

HUGH S. JENKINS
Attorney General