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ATTORNEY GENERAL OPINION NO. 87- 41

The Honorable Ben E. Vidricksen
State Senator, Twenty-Fourth District
State Capitol, 143-N
Topeka, Kansas 66612

Re: Cities and Municipalities--Plumbing and Electrical Wiring; Plumbing and Plumbers in Cities and Counties; Electricians and Electrical Wiring--Competency and Licensure of Plumbers and Electricians

Synopsis: In implementing the competency and licensure statutes for plumbers and electricians found in K.S.A. 1986 Supp. 12-1508 et seq. and 12-1525 et seq., the board of county commissioners of a county or the governing body of a city: (1) may refuse to issue a license because a city or county has a higher passing grade than the city or county that issued the certificate of competency because it is our opinion that the statutory scheme established by subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 for plumbers and 12-1526 for electricians is unconstitutional based on unauthorized delegation of legislative authority; (2) has the discretion to prescribe requirements for passage of examinations; (3) may require passage of the standard Block and Associates exam in order to practice outside of the jurisdiction that has granted a license based on an alternative exam; (4) has no statutory authority to require a contractor to buy an additional license unless the contractor was granted a license based upon the passage of an alternative exam; and (5) may impose their bonding and insurance requirements

on a contractor from another city, provided the bonding and insurance requirements are part of the county's or city's plumbing codes, standards and regulations. The plumbing and electrician competency and licensing statutes are parallel and the above apply to both. Cited herein: K.S.A. 1986 Supp. 12-1508; 12-1509; 12-1510; 12-1525; 12-1526; 12-1527.

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Dear Senator Vidricksen:

As Senator for the Twenty-Fourth District, you request our opinion on a series of questions dealing with the implementation of competency and licensure statutes by local units of government. Specifically, you ask five questions that concern the competency and licensure statutes for plumbers and electricians. You indicate that the laws are parallel and that your questions apply to both plumbers and electricians.

The statutes dealing with competency and licensure are found in K.S.A. 1986 Supp. 12-1508 through 12-1510, inclusive for plumbers and K.S.A. 1986 Supp. 12-1525 through 12-1527, inclusive, for electricians. Your first two questions are as follows:

"When a person has passed the Block and Associates Exam and has been issued a certificate of competency, can another city refuse to issue a license because they have a different passing grade than the city issuing the certificate of competency?"

"Since Block and Associates has been designated as the standard examination, and they recommend a 75% passing grade, is that the minimum score required for the passage of examinations?"

These two questions are interdependent and must be answered together. For purposes of clarity, the second question will be addressed first. K.S.A. 1986 Supp 12-1509(a) states:

"Any county or city requiring the licensure of plumbers practicing within the county or city may conduct examinations designated by K.S.A. 1986

Supp. 12-1508 for the purpose of determining the competency of applicants for such licensure. The board of county commissioners of such county or the governing body of such city shall adopt rules and regulations: (1) Governing the conduct and grading of such examinations; (2) prescribing requirements for passage of examinations; and (3) fixing a uniform fee to be charged all applicants taking each such examination." (Emphasis added.) (The provisions of K.S.A. 1986 Supp. 12-1526(a) are identical for electricians.)

It is our opinion that the statutes allow the board or governing body to prescribe their own requirements for passage of examinations and that there is nothing in the statute to preclude the board or governing body from adopting the Block recommended 75% passage as a minimum score.

Addressing now your first question, it clearly indicates a concern about applying different passage requirements in conjunction with the mandates of subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 requiring a county or city to issue a license to any applicant who presents a certificate of competency based on passage of the standard Block exam and requiring that all licenses issued upon this basis be honored in all cities or counties. This situation creates a problem based on unlawful delegation of legislative authority. While the power to make laws cannot be delegated, the power to apply them can be delegated provided clear standards are established to regulate and control the delegated power. State, ex rel., Schneider v. Bennett, 222 Kan. 12, 19 (1977). (Emphasis added.) Great leeway is allowed the legislature in setting forth standards, and the use of general standards rather than minute standards is permissible. State, ex rel., Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 417 (1981), citing Bennett supra; Welsey Medical Center v. McCain, 226 Kan. 263, 269 (1979). The delegation of authority by the legislature to the boards of county commissioners of counties or the governing bodies of cities to prescribe the requirements for passage of examinations is within the legislature's power, especially in light of the Kansas Supreme Court's reasoning in Tomasic.

In Tomasic , 230 Kan. 404, the Kansas Supreme Court looked to whether a general determination of need (that it was necessary for a port authority to transact business or exercise their power) was a sufficiently clear standard. The court held that such a determination of need was constitutionally adequate when coupled with the assumption that it would be made "fairly, honestly and reasonably." 230 Kan. at 417. Likewise in our instance, the power to prescribe a passing score can be coupled with the assumption that the score will be set fairly, honestly and within reason. The delegated power to prescribe a passing score appears to be constitutionally adequate as a clear standard.

However, by making all licenses (issued upon the basis of successful passage of the standard Block exam) valid in all cities or counties, [subsection (c) of K.S.A. 1986 Supp. 12-1509 and 12-1526], the legislature is allowing the city or county with the lowest passage requirement to impose that standard on all counties and cities. Illustrative of this is the scenario where an applicant for licensure fails the standard exam in one county, goes to another county and makes the same score but because of a lower passage requirement obtains a certificate of competency and is issued a license. This license in turn must be honored by the county where the applicant originally did not pass the exam. It is readily apparent that subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 and 12-1526 allow the city or county with the lowest passage requirement to set the passing score for all other cities or counties. Allowing one city or county to set the standard for all other cities or counties results in the unauthorized delegation of legislative authority and contravenes the power to make laws that is vested in the House of Representatives and the Senate. Kan. Const., Art. 2, §1.

Accordingly, it is our opinion that the statutory scheme established by subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 for plumbers and 12-1526 for electricians is unconstitutional based on unauthorized delegation of legislative authority. It is therefore our opinion that a city can refuse to issue a license because the city has a different higher passing grade than the city which issued the certificate of competency. See 16 C.J.S. Constitutional Law §144 (1984).

The rest of the questions will be answered in the order asked. Your third question is:

"Do contractors need to be Block certified to do business in another jurisdiction?"

K.S.A. 1986 Supp. 12-1510 states in pertinent part:

"Within their respective jurisdictions and subject to the provisions of K.S.A. 12-1509, any county or city may:

"(a) Utilize examinations other than those designated by K.S.A. 1986 Supp. 12-1508 for the examination of plumbers for licensure to practice only within the jurisdiction of such city or county;

. . . .

"Except when authorized by reciprocal agreement between the political subdivisions involved, licenses granted upon the basis of examinations other than those designated by K.S.A. 1986 Supp. 12-1508 [Block and Associates exam] shall not authorize a plumber to practice outside of the jurisdiction of the city or county granting such license." (The provisions of K.S.A. 1986 Supp. 12-1527 are identical for electricians.)

In accordance with these statutes, it is our opinion that contractors who have not taken the standard Block and Associates exam cannot practice outside of the jurisdiction that has granted a license based on an alternative examination unless authorized by reciprocal agreement.

Your fourth question poses the following scenario:

"Section (c) [K.S.A. 1986 Supp. 12-1526(c)] states, 'All licenses issued by a county or city [per this Act] . . . shall be valid in any county or city which requires examination and licensure of electricians for practice in such county or city.' Contractor 'X' successfully passed the standard examination, received a Certificate of Competency, and was subsequently issued a license by City 'A'. Must City 'B' accept the license issued by City 'A' and allow Contractor 'X' to work within its jurisdiction; or may City 'B' merely accept the City 'A' license as recognition that its examination requirements

have been met and still require Contractor 'X' to buy an additional license?"

In accordance with our answer to your first and second questions, subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 and 12-1526 may be subject to constitutional challenge. Notwithstanding, it is our opinion that until such constitutional challenge is made, City B must accept the license issued by City A and allow Contractor X to work within its jurisdiction. Further, there is no statutory authority for requiring Contractor X to buy an additional license unless Contractor X was granted a license upon the basis of passage of an exam other than the standard Block exam in accordance with K.S.A. 1986 Supp. 12-1510(c) for plumbers or 12-1527(c) for electricians which limits the validity of a license issued upon an alternative exam to the jurisdiction of the city or county granting such license.

Your fifth and last question concerns bonding and insurance. You ask:


"May City 'B' impose the same requirements on a contractor from City 'A' that they impose on City 'B' contractors in regards to bonding and insurance? Would this come under Section 3(b) [K.S.A. 1986 Supp. 12-1510(b) and 12-1527(b)]?"

K.S.A. 1986 Supp. 12-1510(b) provides that a city or county may, within their respective jurisdiction and subject to K.S.A. 1986 Supp. 12-1509, adopt and enforce plumbing codes, standards and regulations promulgated by the board of county commissioners or governing body of the city. Accordingly, it is our opinion that K.S.A. 1986 Supp. 12-1510(b) authorizes a city to impose their bonding and insurance requirements on a contractor from another city, provided the bonding and insurance requirements are part of the city's plumbing codes, standards and regulations. The same would be true for electricians pursuant to K.S.A. 1986 Supp. 12-1527(b).

In conclusion, our opinion is as follows. The plumbing and electrician competency and licensure statutes do not set any minimum score for passage of the standard Block exam, and further they allow the passage requirements to be prescribed by the governing bodies of cities or the boards of county commissioners of counties. Contingent upon a successful constitutional challenge against subsections (b) and (c) of K.S.A. 1986 Supp. 12-1509 and 12-1526, a city may refuse to issue a license because they have a different passing grade

than the city issuing the certificate or competency. Contractors that have not taken the standard Block exam cannot practice outside of the jurisdiction that has granted a license based on an alternative exam unless authorized by reciprocal agreement. There is no statutory authority for requiring a contractor to buy an additional license unless the contractor was granted a license upon the basis of an alternative exam. Finally, a city may impose their bonding and insurance requirements on a contractor from another city, provided the requirements are part of the city's plumbing codes, standards and regulations.

Very truly yours,


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