



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

January 24, 1948

Mr. C. E. Belk, Administrator,
Board of Plumbing Examiners,
Austin, Texas

Opinion No. V-481.

Re: Applicability of the
Plumbing License Law
of 1947 to the oper-
ator of an electric
sewer cleaner.

Dear Mr. Belk:

Your letter requesting our opinion states,
in part, as follows:

"(We) have received several inquiries from companies whose business it is to maintain or clean out drain pipes, sewer pipes and appurtenances carrying waste from buildings to the sewer line.

"In a majority of cases no plumbing fixtures, pipes, or joints are removed, altered, installed or repaired.

"Would you please give us an opinion on the following question: 'Would the operator of an electric sewer cleaner which does not require the removal, installation or repair of any fixtures, pipes, joints or plumbing appurtenances, constitute the operator thereof a person engaging in, working at, or conducting the business of plumbing, as defined under the Plumbing License Law of 1947, being Article 6243-101 of Vernon's Annotated Civil Statutes?'"

The pertinent provisions of Article 6243-101, Vernon's Civil Statutes, are as follows:

"Sec. 2. (a) The word or term 'plumbing' as used in this Act means and shall include: (1) All piping, fixtures, appurtenances and appliances for a supply of water or gas, or both, for all personal or domestic purposes in and about buildings where a person or persons live, work or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water or gas supply, or both, on the premises, or the main in the street, alley or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal terminal holding private or domestic sewage; (2) the installation, repair and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, or both, or disposal of waste water or sewage. . . .

"Sec. 3. The following acts, work and conduct shall be expressly permitted without license: . . .

"(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; . . .

"Sec. 14. . . . no person, whether as a master plumber, . . . employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from

the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and . . . it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation or plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act. And it is expressly provided that the provisions of Article 122 of the Penal Code of Texas shall apply to violations of this Act, and said Article 122 of the Penal Code and the penalties therein provided are hereby expressly referred to."

Where a statute defines a word or group of words, that definition is binding on the courts (*Hurt v. Cooper*, Tex. Sup. 110 S. W. (2d) 896, 904), for in all interpretations one should look diligently for the intention of the Legislature. R.C.S. 1925, Art. 10, Sec. 6, P. C. Art. 7.

In *State v. Gottstein*, (Minn.) 228 N.W. 221, 125 A.L.R. 715, it was held that one who was engaged in cutting out and removing from a house sewer the roots of trees and shrubs which had gained entrance therein and obstructed the flow of sewage therefrom into the city sewer, using for the purpose an electrically operated cutting instrument inserted in one of the basement cleanouts in the drainage system, after removing a cleanout cap or cover, the position of the tiles in the sewer being in no manner disturbed, and there being no alteration or addition made in the structure of the tiles, could not

be convicted of violating an ordinance of the City of Minneapolis which made it unlawful for an unlicensed person to "construct, extend, alter or repair any plumbing work or house drainage. . ." Said the Court:

"The work which defendant did on the occasion in question is not claimed to have been a construction, extension, or alteration of any plumbing or house drainage system prohibited by the ordinance unless done by a licensed plumber. But it is contended that it comes within the meaning of the word 'repair' in the ordinance. It is well known that in every house plumbing and sewage system there are cleanouts provided where by the use of an ordinary wrench the cap or cover may be removed and entrance made to remove or clean out obstructions. Often a simple contrivance used by one not a licensed plumber may remove the clogging matter. Nothing in the system is out of order or in need of repair. Nothing need be done to the tile or pipe in which the obstruction is found other than remove the same, that is, clean the pipe or tile. . . .

"Cutting off and removing the roots inside the tile did not make good any defects in the tile itself."

You have further verbally informed us that the electric sewer cleaner is substantially of the same general character as the one described in the Gottstein case and is inserted in the sewer system in the manner hereinbefore described. The only part of the sewer system that is in anywise disturbed is the usual metal clean-out cap or plug found in the metal part of the sewer line and so fastened or held in place that it may be easily removed or replaced.

Subsection (2), Section 2, of the statute describes the term "plumbing" as follows:

"The installation, repair and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work

or assemble, for a supply of gas, water, or both, or disposal of waste water or sewage."

Section 14 makes it a penal offense for any person to "engage in, work at, or conduct the business of plumbing in this state. . . except as specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided by this Act.

It is perfectly obvious that a person who removes an obstruction from a sewer pipe or line by a method "which does not require the removal, installation or repair of any fixture, pipes, joints, or plumbing appurtenances," other than the removal and replacement of the usual clean-out cap or plug in the sewer line, does not install or repair any piping, fixtures, joints or plumbing appliances. State v. Gottstein, supra.

The word "maintenance," contained in the above quoted statutory definition of "plumbing," is, in our opinion, of no particular significance. That word, as used in the statute, means the same thing as "maintain." These two words are frequently used in the sense of keeping a thing in repair. E. E. Kelly Co. v. United States, 17 C. C. P. A., 30, 32. The words "repair" and "maintain" have often been held by the courts of this and other jurisdictions to mean practically the same thing. Missouri K. & T. Ry. Co. of Texas v. Bryan, 107 S. W. 572; McChesney v. Village of Hyde Park, 37 N. E. 858, and authorities there cited. Therefore, we conclude that the words "repair" and "maintenance," as used in this statute, are synonomous and mean the same thing - "to restore to a sound or good state after decay, injury, dilapidation, or partial destruction," one of the definitions given by Webster.

A sewer pipe or line cleaned by the method and in accordance with the facts stated is neither installed, repaired nor maintained. The physical structure of the drainage system is not materially disturbed. The only reason why it does not properly function is due to the presence therein of some substance which obstructs the usual free flow of sewage through it, and not to the decay, injury, dilapidation, or partial destruction of the pipe or line.

After a careful consideration of the statute, we have concluded that the cleaning of a sewer pipe by a person using an electric sewer cleaner, which does not require the removal, installation or repair of any fixture, pipes, joints, or plumbing apparatus, other than the removal of the usual clean-out cap or plug of the sewer pipe for the purpose of inserting the cleaner in the pipe and the replacement thereof, does not come within the meaning of "plumbing," as that term is defined in the statute. Therefore, the operator of such a cleaner is neither engaged in, working at, or conducting the business of "plumbing" within the purview of The Plumbing License Law of 1947, Article 6243-101, Vernon's Civil Statutes.

SUMMARY

The operator of an electric sewer cleaner which does not require the removal, installation or repair of any fixtures, pipes, or plumbing appliances, other than the removal of the usual clean-out cap or plug of the sewer pipe for the purpose of inserting the cleaner in the pipe and the replacement of the same, is not engaged in, working at, or conducting the business of "plumbing" within the meaning of that term as defined in The Plumbing License Law of 1947. Art. 6243-101, V.C.S; State v. Gottstein, 228 N. W. 221, 125 A. L. R. 715.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

Bruce W. Bryant

By

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APPROVED:

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