ELEEMOSYNARY INSTITUTIONS: : Whether or not the full time plumber employed the State Hospital No. 2 St. Joseph, Missouri is exempt from the St. Joseph ordinance requiring a license for plumbers.

107

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69

September 27, 1945

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Honorable W. R. Painter, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Painter:

On August 30, 1945, you requested an opinion of this office, which letter reads as follows:

> "We have a verbal opinion from your office to the effect that a plumber employed at State Hospital #2, St. Joseph, who gives his entire time to state work is exempt from the City of St. Joseph ordinance requiring a license for plumbers and we have so informed the Superintendent of the hospital. However, will you please give us a written opinion, per request of the city department."

The St. Joseph ordinance referred to in your letter was enacted pursuant to the requirements of Article 20, Chapter 38, R. S. Mo., 1939. The pertinent sections of this article are set out below. Section 7560, R. S. Mo. 1939, reads as follows:

> "That any person now or hereafter engaging or working at the business of plumbing in cities or towns of fifteen thousand or more inhabitants in this state, either as master plumber or journeyman plumber, shall first receive a certificate thereof in accordance with the provisions of this article."

Section 7561, R. S. Mo. 1939, reads as follows:

> "Any person desiring to engage or work at the business of plumbing, either as a master plumber, employing plumber or as a journeyman

plumber, in cities having a population of fifteen thousand or more, shall make application to a board of examiners hereinafter provided for, and shall at such times and places as said board may designate, be compelled to pass such examination as to his qualifications as said board may direct. Said examination may be made in whole or in part in writing and shall be **of practical and elementary character, but sufficiently strict to test the qualifications of the applicant."**

Section 7563, **R. S. Mo. 1939, reads as follows:**

"Said board of examiners shall, within ten days, after their appointments, meet and shall then designate the times and places for examination of all applicants desiring to engage in or work at the business of plumbing within their respective jurisdiction. Said board shall examine said applicants as to their practical knowledge of plumbing, house drainage and ventilation, and if satisfied of the compentency of such applicants, shall thereupon issue a certificate to such applicant authorizing him to engage in or work at the business of plumbing either as a master plumber or employing plumber or journeyman plumber. The fee for a certificate for a master plumber or employing plumber shall be $5.00 for a journeyman plumber it shall be $1.00. Said certificate shall be valid and have force throughout the state and shall be renewable annually, and all fees received for said certificates shall be paid into the treasury of the city where such certificates are issued."

Section 7565, R. S. Mo. 1939, reads as follows:

"Each city with a population of fifteen thousand or more in the state shall, by ordinance, within three months after the passage of this article, prescribe rules and regulations for the material

> construction and inspection of all plumbing and sewerage placed in, or in connection with any building in each city, and the board of health or proper authorities shall further provide that no plumbing work shall be done without a permit being issued therefor upon such terms and conditions as said city shall prescribe."

Article I of Chapter 51, R. S. Mo. 1939, relates to the state eleemosynary institutions.

Section 9263 of Article I, R. S. Mo. 1939, relates to the authority of the Board of Managers of such institutions and reads as follows:

> "The Board of Managers shall have authority to make all necessary rules, regulations and by-laws for the government, discipline and management of each institution not inconsistent with the laws of this state, and such rules, regulations and by-laws, when so made and adopted by the board, shall be binding upon all officers and employees of the institution, and shall remain in force and effect until changed or annulled by the Board by an order entered upon the records of such institution."

Section 9278 of the same article, R. S. Mo. 1939, relates to the superintendent of the individual institutions and reads as follows:

> "The person appointed as superintendent of each of the several eleemosynary institutions herein named shall have complete charge, control and management of the entire institution with special attention to the health and sanitation of the respective institution over which he has been appointed as manager, and shall devote his entire time thereto, and shall receive, unless otherwise provided for, the sum of $3,600.00 per annum, to be paid monthly, together with all necessary and actual traveling expenses. The superintendent of the Missouri state school shall receive the sum of $3,600.00 per annum, to be paid in monthly installments, together

with all necessary and actual traveling expenses."

We think the questions presented in the matter before us are:

(1) Does the plumber, devoting his full time to the State Hospital No. 2 at St. Joseph, fall within the provisions of the Plumbers' Act set out above as one who is "engaged in the business of plumbing."?

(2) Does the plumbers' law apply to those engaged in work for State Hospital No. 2?

The phrase "engaged in business" is defined as that employment or occupation which occupies the time, attention and labor for the purpose of a livlihood or profit. (Wilson v. State Tax Commission, 54 Pac.(2d) 363, 176 Okla. 90; People ex rel. Allied Stock v. Graves, 294 N. Y. Supp. 995; Comer v. State Tax Commission, 69 Pac.(2d) 936, 41 N. M. 403; Mass Protective Ass'n. v. Lewis, (C.C.A. Pa. 1934) 72 Fed.(2d) 952; Sempale v. Schwartz (1908 Mo. App.) 109 S. W. 633.

We think the plumber at State Hospital No. 2 falls within the definition above, since he is working at his occupation as means of a livlihood and the fact that he performs all of his work for one person would not take him out of this classification. We find no cases which would indicate the contrary.

We think, therefore, that the plumber in question is not exempt from the state law relating to plumbers by reason of the fact that he is not "engaged in the business of plumbing" within the terms of the statute.

Regarding the second question, three inquiries must be made, (1) is an employee of the state, of an institution of the state, exempt from a general state law merely by reason of such employment. (2) Does the act relating to eleemosynary institutions give the state or the agents thereof control over the management of the institution to an extent which would exclude the application of the Plumbers' Act in the present situation, and, (3) what was the intent of the Legislature in enacting Article 20, Chapter 38, R. S. Mo. 1939, relating to the licensing of plumbers.

We find no statutes or cases exempting state employees as a whole or exempting the employees of any state institution from the general laws of the state. There is, therefore, no authority per se for exempting such employees.

It will be noticed that Section 9263, quoted above, which sets

out the authority of the Board of Managers as agents for the state in the management and control of the state eleemosynary institutions, gives said Board complete control and management "not inconsistent with the laws of this state." The statute thus limits their authority to action which is not inconsistent with other laws of this state. Since the Plumbers's Act is a general law of the state, we think the Board of Managers of the eleemosynary institutions would be required to comply with the terms of this statute unless its action in any given situation was not inconsistent with the Plumbers' Act.

Section 9278, quoted above, gives the superintendent of each institution complete powers over the management of the respective institutions, and also says that he shall give special attention to the health and sanitation of the institution. We find no cases which indicate just how far this broad authority extends, but since all the sections of an Act must be read together in interpreting an Act or a part thereof, (State ex rel. Carroll v. Becker 45 S. W.(2d) 533, 329 Mo. 501; Aff. Carroll v. same, 285 U.S. 380; Logan v. Matthews, 52 S. W.(2d) 989, 330 Mo. 1213; State ex rel. McKittrick v. Carolene Products, 144 S. W.(2d) 153, 346 Mo. 1049) we must read this section together with Section 9263, supra. The latter section gives the Board of Managers of the eleemosynary institutions only that power which is not inconsistent with another state statute. Therefore, we think it apparent that the Legislature did not intend that the superintendent of an institution, who is subordinate to the Board of Managers, should have any greater authority than the Board of Managers. We therefore conclude that the superintendent has no authority which allows action inconsistent with another state law.

We think, therefore, that the final question to be determined is whether or not the action of the Board of Managers or the superintendent of State Hospital No. 2, in not requiring the Hospital plumber to be licensed, would be inconsistent with the Plumbers' Act. This question turns upon whether or not the Legislature intended that the provisions of this law should apply to all plumbers working in the City or whether it could be said that their intention was that a full time employee of a state institution should be exempt therefrom.

It is a well settled rule of statutory interpretation that the state and its agencies are not bound by general words limiting the rights and interests of its citizens unless such public authorities be included within the limitation expressly or by necessary implication. In C. J. Kubach Co. v. McGuire (1926 Cal.) 248 Pac. 676, the charter of the City of Los Angeles prohibited buildings constructed in a certain area from exceeding the height of one-hundred and fifty feet. The building in question was in this area. A contract

was let for this building but the contractor refused to sign it on the grounds the plans would be in violation of the city charter. Held, the charter provision was not applicable to any action by the city. The court in that case said:

> "*In the interpretation of a legislative enactment it is the general rule that the state and its agencies are not bound by general words limiting the rights and interests of its citizens unless such public authorities be included within the limitation expressly or by necessary implication."

In Commonwealth v. Allen (1930 Ky.) 32 S. W. (2d) 42, the State of Kentucky purchased certain property at delinquent tax sales. The county attorney, for the state, attempted to bring suit to recover possession of the land. The circuit clerk refused to allow the suits to be filed until the filing fee was paid. The state contended it did not have to pay the fees. Held, the general statute authorizing the clerk to collect fees did not apply to the sovereign. The clerk was an agent of the state and was therefore merely collecting the fee for the state. In referring to this general statute, the court said:

> "* * *The rule as to such a statute is well settled as follows:
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> "'The state, or the public, is not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless expressly named therein, or included by necessary implication.'"

In Nelson v. McKenzie Hague Co. (1934 Minn.) 256 N. W. 96, the plaintiff sued to recover damages for nuisance due to the construction by defendant contractor, as agent of the state, of a highway near the plaintiff's home. The defendant contended that it was not liable under the general state statute providing for liability for causing a private nuisance because they were proceeding to perform a duty owing to the sovereign state. Held, the defendant was not liable since it was an agent of the state and the state would not be liable under the statute. In referring to the general rule, the court said:

> "While that rule was born of common-law notions of kingly prerogative, the reason for applying it in our representative government is equally cogent, for so applied it has the 'same ground of expediency and public convenience.' 25 C.L.

784; 59 C.J. 1121; Commonwealth v. Baldwin, 1 Watts (Pa.) 54, 26 Am. Dec. 33; People v. Herkimer, 4 Cow. (N.Y.) 345, 15 Am. Dec. 379 (Anno. 380); State ex rel. Davis v. Love, 99 Fla. 333, 126 So. 374. In United States v. Hoar, 2 Mason, 311, 314, Fed. Cas. No. 15,373, Mr. Justice Story in discussing this question said: 'But, independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail, founded upon the legislative intention. Where the government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed, or the language used, that the government itself was in contemplation of the legislature, before a court of law would be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different, and often contrary force to the government itself. It appears in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act.' See, also, State v. City of Milwaukee, 145 Wisc. 131, 129 N.W. 1101, annotated in Ann. Cas. 1912A, at page 1214."

In Clements v. Sherwood (1942 Ohio) 45 N.E. (2d) 805, the petitioners asked a declaratory judgment determining the number of hours which employees of the State of Ohio could work. The general statute of the State set maximum hours which female and minor employees could work in work-shops and factories of the State. Held, such general statutes did not apply to employees of the State. The court pointed out that these general statutes applied to general employment of the individuals enumerated and that neither had any reference to those employed by the State. However, the court further said that general statutes do not bind the State unless they expressly so indicate. The Court, l.c. 807, said:

"Judge Allen, delivering the opinion of the court, on page 246 of 126 Ohio St., on page 58 of 185 N.E., discusses this matter at some length, and cites a

> number of supporting opinions. She there states that it is the contention of the state that the state as a sovereignty is not bound by the terms of a general statute unless such statute expressly applies to the state. She states: 'This is a well-established doctrine,' citing cases in support thereof. It will thus be seen that these two general statutes, even though they might apply to the very character of work done by the employees whose position is now in question, do not control the state in its employment for the reason that as a sovereignty it is not bound by the terms of these general statutes."

The same general rule of statutory interpretation has been followed in other jurisdictions. Desantis v. Delaware, L. and W.R. Co. (1933 N.J.), 165 A. 119; Cranfield v. City of Winston, Salem (1931 N.C.) 158 S.E. 241; State Land Bd. v. Campbell (1932 Ore.), 13 P. (2d) 346; Culver v. Commonwealth (1944 Pa.), 35 A. (2d) 64; Comm. of State Ins. Fund v. Derowitz (1942) 39 N.Y.S. (2d) 34; Yancey v. N.C. St. Hi. Comm. (1942 N.C.) 22 S.E. (2d) 256; State v. McVey (1942 Ore.) 121 P. (2d) 461.

In Fulton v. Sims (1908) 127 Mo. App. 677, the city of Fulton had passed an ordinance requiring all purchases of coal to be weighed on city scales. The state insane asylum bought coal and did not weigh the same on the city scales. The Kansas City Court of Appeals held that since the state institution had the power to purchase coal for its own consumption and use, it was not required to comply with the city ordinances. The court said that the state institution was under the control and management of the state and had been granted specific powers to purchase goods, that since the powers of the city were derived from the state the state could withhold certain powers from the city. They then stated that the power to purchase in any way deemed advisable had been granted to the state institution and thus any power over such purchases had been withheld from the city. The Court in that case, l.c. 681, 682, said:

> "The coal sold by the defendant was for supplies to a State institution which is conducted under the control and management of the State. It is especially provided by statute that the board of managers of the institution shall purchase supplies for its use and consumption (Section 7708, Revised Statutes 1899). The city of Fulton and the hospital for the insane are

> each under the control of the State and the functions of each are separately provided for. In the respect here considered, each is independent of the other, and we therefore can discover no reason, in the absence of statutory provisions, supporting the city in interfering with the hospital in the purchases which the statute authorizes it to make for itself. (Ky. Institution for the Blind v. Louisville, 97 S.W. 402.) That case arose over the city attempting to compel the institution to provide certain fire-escapes for its buildings, and we consider it to be in point in the present controversy. The Kentucky Court of Appeals among other things said that 'The municipal government is but an agent of the State--not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the State. It is competent for the State to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city have ever a superior authority to the State over the latter's own property, or in its control and management? From the nature of things it cannot have.'"

The Fulton case indicates the application of the general statutory construction rule to a situation very similar to that found in the instant situation. The Court indicated that, where the statute had given the eleemosynary institutions general power, this power could not be interfered with by action of a city, it follows that the Court considered that the intention of the Legislature was that, where it had delegated authority to the eleemosynary institutions, such authority was to be exercised without interference by city ordinances.

From the foregoing cases we are of the opinion that the intention of the Legislature would be held to exclude the operation of the Plumbers' Act from situations in which state employees of the eleemosynary institutions were involved.

CONCLUSION.

It is, therefore, the opinion of this Department that a plumber,

who is employed full time in the state hospital No. 2 in the city of St. Joseph, is not required to obtain a license in accordance with the ordinances of the city of St. Joseph which require the licensing of plumbers.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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