PROFESSIONS AND OCCUPATIONS: CONTRACTORS

Board for Contractors Regulations do not supplant locality’s ability, under its general police powers, to require licensed plumbers to install backflow prevention devices when such requirement is related directly to protection of locality’s water supply system.

Mr. John A. Rupp
City Attorney for the City of Richmond
December 6, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether the City of Richmond may continue to require that only licensed plumbing contractors or master plumbers install backflow prevention devices on water lines where cross connection may result in contamination of the city’s potable water supply, in light of recent amendments to the Board for Contractors Regulations that expand the list of professions authorized to install such devices.

Response

It is my opinion that the City of Richmond may continue to require that only licensed plumbing contractors or master plumbers install backflow prevention devices to prevent contamination of the city’s potable water supply. Such a requirement appears to be an appropriate exercise of the city’s police power and is not inconsistent with state law.

Applicable Law and Discussion

The State Board of Health is responsible for promulgating regulations "governing waterworks, water supplies, and pure water … to protect the public health and promote the public welfare."¹ Article 3 of the Board’s Waterworks Regulations² requires that “[a]n approved backflow prevention device³ shall be installed at each service connection to a consumer’s water system where, in the judgment of the water purveyor⁴ or the division,⁵ a health, pollution or system hazard to the waterworks exists.”⁶ The regula-
tions prescribe the type of backflow prevention device to be installed by water utility owners, depending on the degree of hazard that exists. All such devices must comply and be installed in accordance with the Uniform Statewide Building Code.

The Board for Contractors regulates individuals who install backflow prevention devices, including plumbing contractors, plumber tradesmen, and fire sprinkler and landscape irrigation contractors. Pursuant to the authority delegated by § 54.1-1102(A), the Board has adopted regulations governing tradesmen. The regulations define "plumber" as a "tradesman who does plumbing in accordance with the Virginia Uniform Statewide Building Code," and "plumbing work" to include "the installation, main-tenance, extension, or alteration or removal of piping, fixtures, appliances and appurtenances in connec-tion with [backflow prevention devices, boilers, and public/private water supply systems]."

The Board for Contractors amended its Board for Contractors Regulations, effective Sep-tember 1, 2001, to require that plumbing contractors must meet "all applicable tradesman licensure stan-dards." Prior to September 1, 2001, "fire sprinkler contracting," a recognized contracting specialty, included "the installation, repair, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property." The amended definition provides that "[t]his specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and sprinkler system when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices." A landscape irrigation contrac-tor installs, repairs, improves or removes irrigation sprinkler systems or outdoor sprinklers. The Board for Contractors also amended the definition of "landscape irrigation contracting" to provide that "[t]his specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices." These amendments to the Board for Contractors Regulations expand the classifications of licensed entities that may install backflow prevention devices.

You ask whether, in light of these amendments, the City of Richmond may continue to require, as an exercise of its police power, that only licensed plumbers be allowed to install backflow prevention devices for water systems connected to the city’s water supply system.
The city owns and operates "water supplies and water production, preparation, distribution, and transmission … facilities … for the purpose of furnishing water for the use of its inhabitants."\(^{18}\) As a water utility owner, the city must operate the waterworks, treat water in a manner that provides a safe and healthy supply of potable water, and maintain conditions throughout the water supply system that assure a high degree of capability and reliability.\(^{19}\)

The Code for the City of Richmond provides:

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Application for gas or water service connections shall be made by owners of premises to be served or by the occupants thereof through licensed plumbers, unless otherwise authorized in Chapter 5 (Buildings and Building Regulations), to the Director [of Public Utilities] on forms provided and no gas or water service shall be connected until the Director shall approve such application.\(^{20}\)
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Ordinances adopted pursuant to a city’s police power\(^{21}\) "must have a clear, reasonable and substantial relation to the public health, safety, morals, or welfare, and must be reasonably appropriate for the police power objective sought to be obtained."\(^{22}\) Local ordinances "must not be inconsistent with the … laws … of this Commonwealth."\(^{23}\)

A 1973 opinion has dealt with a locality’s power in a similar situation.\(^{24}\) At issue in that opinion was whether a locality is authorized to require that certain plans submitted to the locality be prepared by a certified professional engineer rather than by a licensed land surveyor.\(^{25}\) The opinion determined that a locality, under its general police powers, is authorized to require such plans to be submitted by certified professional engineers.\(^{26}\) Since the required plans were not intended for recording, but only for the locality’s site approval process, there was no intention to preempt the locality’s prerogative under its general police powers to restrict the preparation of such plans to those it felt best qualified.\(^{27}\)

It is apparent that the regulation of plumbing and reasonable standards to protect the integrity of a locally operated water supply is a proper exercise of a locality’s police power.\(^{28}\) I am aware of no statutory provision that requires localities, or anyone else, to use the services of fire sprinkler contractors or landscape irrigation contractors to install backflow prevention devices. The Board for Contractors Regulations defining those contracting specialties merely set forth a list of work that the person is authorized to
perform from the Board’s perspective. The regulations allow those persons licensed as fire sprinkler and landscape irrigation contractors to install backflow devices. The regulations do not supplant a locality’s ability, under its general police powers, to require licensed plumbers to install backflow prevention devices when such requirement is related directly to the protection of the city’s water supply system.

**Conclusion**

It is my opinion that the City of Richmond may continue to require that only licensed plumbing contractors or licensed master plumbers install backflow prevention devices to prevent contamination of the city’s potable water supply. Such a requirement appears to be an appropriate exercise of the city’s police power and is not inconsistent with state law.


4 A "water purveyor" is "an individual, group of individuals, partnership, firm, association, institution, corpora-tion, governmental entity, or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks." 12 Va. Admin. Code 5-590-10 (West 2002) (defining "owner" or "water purveyor").

5 "Division," for purposes of the Waterworks Regulations, means "the Commonwealth of Virginia, Department of Health, Division of Water Supply Engineering." Id.


8 All backflow prevention devices "shall be installed in a manner approved by the water purveyor and in accor-dance with the Uniform Statewide Building Code." 12 Va. Admin. Code 5-590-630(A)-(B).


16See cite supra note.

17See supra note.


20See supra note.


25Id. at 290-91.

26Id. at 291.

27Id.

28See, e.g., Rountree Corp. v. City of Richmond, 188 Va. 701, 51 S.E.2d 256 (1949) (challenging City of Richmond plumbing code, found to be proper exercise of city’s police power).