



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1997

Mr. Tommy V. Smith
Executive Director
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Letter Opinion No. 97-043

Re: Municipal licensing of persons exempted
from licensure requirements of article 8861,
V.T.C.S. (ID# 38906)

Dear Mr. Smith:

You have asked this office whether persons exempted from the licensing requirements for air conditioning and refrigeration maintenance of article 8861, V.T.C.S., by virtue of section 6(a)(2) of the act, are also exempted from municipal licensing. We have previously held, in Attorney General Opinion JM-1195 (1990) and Letter Opinion No. 95-28 (1995), that article 8861 generally occupies the field with respect to the licensing of air conditioning and refrigeration maintenance. In light of those prior opinions, we believe that persons not required to be licensed by the Department of Licensing and Regulation may not be required to hold municipal licenses.

You ask, essentially, about the relation of two sections of article 8861. Section 9 makes clear that a municipality may not impose additional licensing requirements on a person licensed under article 8861:

A license issued by a municipality of this state is valid under the terms of the license within that municipality. However, a license issued under this Act is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

V.T.C.S. art. 8861, § 9 (emphasis added).

Section 6 exempts several categories of persons from the act's licensing requirements. You have asked specifically about section 6(a)(2), which exempts a person who

performs air conditioning or refrigeration maintenance work if (i) the person is a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the maintenance work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employer

referred to in (i) above do not engage in the occupation of air conditioning and refrigeration contracting for the general public.

Id. § 6(a)(2). Your question, as we understand it, is whether in the light of these two sections, a maintenance worker engaged in air conditioning or refrigeration maintenance on the units at the place where he is employed, as part of his regular employment, who is not required for that purpose to be licensed by the state, is also for the same reason exempt from municipal licensing. In our view, he is.

In Attorney General Opinion JM-1195, this office found that “article 8861 was meant to relieve air conditioning and refrigeration contractors from compliance with regulations varying from jurisdiction to jurisdiction, by providing a scheme under which the obtaining of a state license would authorize such contractors to do business anywhere in the state.” Attorney General Opinion JM-1195 (1990) at 3 n.1. Accordingly, since “[w]here a field of legislation has been occupied by a state statute, specific grants of authority to municipalities to enact ordinances in such field should be considered as implicitly limiting municipal authority to that specifically conferred by statute,” *id.* at 2, we held that cities could not impose additional local license or occupation taxes or bonding requirements on contractors licensed under article 8861.

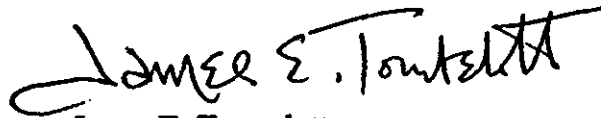
Attorney General Opinion JM-1195 specifically reserved the question of whether a municipality could impose a registration fee on such licensees. However, in Letter Opinion No. 95-28, we held that general-law municipalities could impose no such fees, and that home-rule municipalities could impose them “only in the presumably nominal amounts reasonably necessary to defray the costs of the registration required by section 7 of the Air Conditioning and Refrigeration Contractor Law.” Letter Opinion No. 95-28 (1995) at 3. This conclusion, like that of Attorney General Opinion JM-1195, was based on our reading of the statute as occupying the field of air conditioning and refrigeration maintenance regulation.

In our view, the same analysis as that in Attorney General Opinion JM-1195 and Letter Opinion No. 95-28 leads to the conclusion that, if the legislature has determined that certain classes of person are exempt from the uniform state-wide licensing requirements, they are also exempt from particular municipal licensing requirements. To hold otherwise would defeat the purpose of the uniform state-wide regulatory scheme envisioned by the statute. This does not imply that cities have no control over the activities of persons exempted by section 6(a) of article 8861. Section 6(b) specifically states that “[t]he work described by Subsection (a) of this section remains subject to any permit, inspection, or approval requirements prescribed by a municipal ordinance.” However, applying the maxim “*expressio unius est exclusio alterius*,” the permit, inspection, or approval requirements may not include licensure requirements for those whom the statute has specifically exempted.

S U M M A R Y

Persons exempted from licensing requirements for air conditioning and refrigeration maintenance by article 8861, section 6(a)(2), V.T.C.S., are also exempted from any licensing scheme relating to this activity adopted by a municipality.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James E. Tourtelott
Assistant Attorney General
Opinion Committee