



2010-013

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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**QUESTION 1 CORRECTED**

Honorable Larry D. Dixon  
Member, Alabama State Senate  
820 East Fairview Avenue  
Montgomery, Alabama 36106

Plumbers and Gas Fitters Examining  
Board – Bonds – Revocation –  
Suspensions – Code §34-37-13 –  
Montgomery County

Section 34-37-13 of the Code of Alabama imposes a requirement for posting a bond upon the companies employing master plumbers and master gas fitters. Any individual, however, who engages in master plumbing or gas fitting, who is not employed by a firm or corporation, must also post a bond as required by section 34-37-13 of the Code.

The willful failure to post said bond may be the basis for a revocation or suspension of a master plumber's and master gas fitter's certificate by the board.

Dear Senator Dixon:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is the bond required by section 34-37-13 of the Code applicable to a company that employs master level plumbers or just master level plumbers individually?

FACTS AND ANALYSIS

The Alabama Plumbers and Gas Fitters Examining Board (“Board”) was created by the Legislature to license and regulate plumbers and gas fitters in the State of Alabama. The enabling statutes of the board are codified at section 34-37-1, *et seq.*, of the Code. There are three primary levels of certification, which are apprentice plumbers or gas fitters, journeyman plumbers or gas fitters, and master plumbers or gas fitters. ALA. CODE § 34-37-1 (2002).

Section 34-37-1(7) defines a master gas fitter as follows:

Any person engaged in or proposing to engage in the business of contracting to do, or of superintending the installation, maintenance, or repair of gas systems or gas work, either or both. The individual shall qualify to be a certified master gas fitter. ***If the business be a firm or corporation, at least one active employee of the firm or corporation shall be a duly registered and certified master gas fitter, actively and continuously connected with the conduct of said business.***

ALA. CODE § 34-37-1(7) (2002) (emphasis added).

Section 34-37-1(8) defines a master plumber as follows:

Any person engaged in or proposing to engage in the business of contracting to do, or of superintending the installation, maintenance, or repair of plumbing, or both. The individual shall qualify to be a certified master plumber. ***If the business is a firm or corporation, at least one active employee of the firm or corporation shall be a duly registered and certified master plumber, actively, continuously connected with the conduct of the business.***

ALA. CODE § 34-37-1(8) (2002) (emphasis added).

To protect the public from incompetent plumbers or gas fitters, the Legislature requires that master plumbers and master gas fitters be bonded. Section 34-37-13 states as follows:

In order to protect the public from damages arising from plumbing and gas fitting or plumbing work and gas fitting work failing to comply with the requirements of any state laws applicable thereto, or with the ordinances of any municipal corporation applicable thereto, it is hereby provided that *before any person engages in the business of master plumber or master gas fitter, he shall execute and deposit with the judge of probate in the county of his principal place of business a bond in the sum of \$2,000.00.* Such bond shall be a cash bond of \$2,000.00 or executed by a surety authorized and qualified to write surety bonds in the state of Alabama, and shall be approved by the probate judge. Such bond shall be conditioned upon all plumbing and gas fitting work done or supervised by such master plumber or master gas fitter complying with the provisions of any laws or ordinances relating to plumbing and gas fitting and applicable thereto. Action on such bond may be brought against the principal and surety thereon in the name of, and for the benefit of, any person who suffers damages as a consequence of said master plumber's or master gas fitter's work not conforming to the requirements of any laws or ordinances pertaining to plumbing and gas fitting and applicable thereto, provided, however, that the aggregate liability of the surety to all persons so damaged shall, in no event, exceed the sum of said bond.

ALA. CODE § 34-37-13 (2002) (emphasis added).

There has been some uncertainty about the scope of the requirement for a bond; to wit, whether only individual master plumbers and master gas fitters must be bonded, or whether companies employing such master level plumbers and gas fitters must also be bonded. This Office has been informed that the practice has been that only the company that employs

master plumbers or master gas fitters has executed the bond in the county in which the company is doing business and that individual master plumbers employed by that company do not execute separate bonds.

“[T]he fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a statute. . . . If possible, a court should gather the legislative intent from the language of the statute itself. . . . The legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained by its passage.” *Norfolk S. Ry. Co. v. Johnson*, 740 So. 2d 392, 396 (Ala. 1999).

It is also established law that an administrative body’s interpretation of its authorizing legislation is entitled to great weight. *Ala. Metallurgical Corp. v. Ala. Pub. Serv. Comm’n*, 441 So. 2d 565, 571 (1983); *State v. S. Elec. Generating Co.*, 274 Ala. 668, 671, 151 So. 2d 216, 217 (1963). Although administrative construction of a statute is not binding, such construction is persuasive and is to be considered favorably. *McCullar v. Universal Underwriters Life Ins. Co.*, 687 So. 2d 156, 163 (Ala. 1996).

The law provides that “each person engaged in or proposing to engage in the business of contracting to do, or of superintending the installation, maintenance, or repair of plumbing, or both” or “any person engaged in or proposing to engage in the business of contracting to do, or of superintending the installation, maintenance, or repair of gas systems or gas work, either or both” must be licensed by the Board. ALA. CODE §§ 34-37-1(7), 34-37-1(8), & 34-37-6 (2002). The law also provides that if the “business is a firm or corporation, at least one active employee of the firm or corporation shall be a duly registered and certified master plumber” or “master gas fitter.” ALA. CODE § 34-37-1(7) & 34-37-1(8) (2002). Thus, all the employees of the firm or corporation doing work are not required to be licensed if one person who is actively and continuously connected with the work is licensed and certified.

Based upon the longstanding interpretation of the statute, as evidenced by the practice of firms or corporations to execute one bond for the firm or corporation, and the language of the statute requiring one person in a firm or corporation to be licensed, it is the opinion of this Office that the companies employing master level plumbers and gas fitters are required to post the bond, not the individual plumbers and gas fitters that work for that company. Any individual who does not work for a firm or

corporation, but who engages in master plumbing or gas fitting, must post a bond in the county in which that individual performs that work.

### CONCLUSION

Section 34-37-13 imposes a requirement for posting a bond upon the companies employing master plumbers and master gas fitters. Any individual, however, who engages in master plumbing or gas fitting, who is not employed by a firm or corporation, must also post a bond as required by section 34-37-13 of the Code.

### QUESTION 2

Does the Plumbers and Gas Fitters Examining Board have the authority under section 34-37-13 to require master plumbers or gas fitters to execute a \$2000 bond?

### FACTS AND ANALYSIS

The enabling statutes of the Alabama Plumbers and Gas Fitters Examining Board do not authorize the board to take affirmative action to ensure that master plumbers and master gas fitters comply with the requirement to post a bond that is imposed by section 34-37-13. The Legislature did not authorize the board to require proof of a bond before issuing a certification as a master plumber and master gas fitter or before renewing said certificates. The posting of a bond, however, is a legal requirement that is imposed by law and, thus, a failure to have a bond could be the basis of a revocation or suspension of the certificate of a master plumber or master gas fitter.

Section 34-37-12 authorizes the board to "revoke or suspend any certificate . . . for a willful violation of any law or ordinance pertaining to the business of the holder of such certificates." ALA. CODE § 34-37-12 (2002). The willful failure to post the bond required by section 34-37-13 could be the basis for disciplinary action upon the receipt of a complaint for failure to comply with the law.

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CONCLUSION

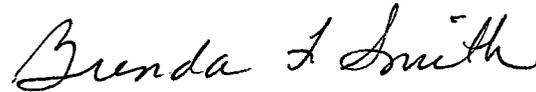
The willful failure to post said bond may be the basis for a revocation or suspension of a master plumber's and master gas fitter's certificate by the board.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

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