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#93064

NO.
STATE OF NEBRASKA
OFFICIAL
AUG 11 1993
DEPT. OF JUSTICE

DATE: August 10, 1993

SUBJECT: Clarification of Attorney General Opinion No. 93049; Whether 1993 Neb. Laws LB 193, § 22, Requires Municipalities to Impose Penalty Identical to That Provided in 1993 Neb. Laws LB 193, § 33

REQUESTED BY: Terry L. Carlson, Executive Director
State Electrical Board

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

In your opinion request which was the basis for Attorney General Opinion No. 93049, you asked whether municipalities having electrical licensing or inspection programs approved by the State Electrical Board (Board) must enforce the provision in 1993 Neb. Laws LB 193, § 33, which makes it a Class I misdemeanor to engage in certain types of conduct related to electrical work and inspections performed under the State Electrical Act (Act), Neb. Rev. Stat. §§ 81-2101 to 81-2145 (1987, Cum. Supp. 1992, & LB 193). We replied that whether political subdivisions like cities must prosecute acts prohibited under LB 193, § 33, depends upon the content of that city's ordinances. Op. Att'y Gen. No. 93049 at 3 (June 11, 1993).

You now ask for clarification of this conclusion. Specifically, you wish to know whether LB 193, § 22 (amending Neb. Rev. Stat. § 81-2125), requires cities to impose a penalty for violations of the cities' electrical ordinances which is equivalent to the penalty provided in LB 193, § 33 (amending Neb. Rev. Stat. § 81-2143), for violations of the State Electrical Act. We

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conclude that LB 193, § 22, does not require cities to impose a penalty that is identical to that provided in LB 193, § 33.

LB 193, § 22, provides in part:

> State inspection shall not apply within the jurisdiction of any county, city, or village which provides by resolution or ordinance standards of electrical wiring and its installation that are not less than those prescribed by the board or by the State Electrical Act and which further provides by resolution or ordinance for the inspection of electrical installations within the limits of such subdivision by a certified electrical inspector. No person other than the holder of an electrical inspector's certificate of qualification shall be appointed to act as electrical inspector and to enforce the act as electrical inspector and to enforce the act or any applicable resolution or ordinance within his or her jurisdiction. A copy of the certificate of each electrical inspector shall be provided to the board by the political subdivision issuing the certificate.

LB 193, § 33, makes it a Class I misdemeanor to commit or order another to commit the following acts:

> (1) To make a false statement in any license application, request for inspection, certificate, or other lawfully authorized or required form or statement provided by the State Electrical Act;
>
> (2) To perform electrical work for another without a proper license for such work;
>
> (3) To fail to file a request for inspection when required;
>
> (4) To interfere with or refuse entry to an inspector lawfully engaged in the performance of his or her duties; or
>
> (5) To fail or neglect to comply with the act or any lawful rule, regulation, or order of the board.

"In the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning." ***State v. Stein***, 241 Neb. 225, 228, 486 N.W.2d 921, 923 (1992); ***State v. Matthews***, 237 Neb. 300, 465 N.W.2d 763 (1991). ***See also*** Neb. Rev. Stat. § 49-802(5) (1988) (statutory words and phrases shall be construed and understood according to the common and approved usage of language).

The plain language of LB 193, § 22, provides that certain political subdivisions will not be subject to state electrical inspections if the subdivision provides by resolution or ordinance (1) standards of electrical wiring and electrical installation that are not less than those prescribed by the Board or Act and (2) for the inspection of electrical installations within the subdivision's limits. Section 22 only requires that these political subdivisions' electrical wiring and installation standards be equal to or greater than those set by the Board or Act; the bill does not require that penalties for violating the subdivisions' resolutions or ordinances be the equal to or greater than those provided in LB 193, § 33, for violating provisions of the State Electrical Act.

Municipalities are generally endowed with broad and general police powers to cope with problems regarding health, safety, and public welfare within the municipalities' corporate boundaries. Charles S. Rhyne, The Law of Local Government Operations § 19.1, at 447 (1980). However, municipalities do not have inherent police power, and they can exercise only such powers as the state vests in them under constitutional provisions, statutes, or charters. *Id.*

Many Nebraska municipalities have the authority to enact ordinances and impose fines and penalties for violations of these ordinances. *See* 1993 Neb. Laws LB 138, § 61 (cities of the metropolitan class have power by ordinance to make and enforce all police regulations for the general welfare, health, and safety of the city and to pass ordinances and impose fines and penalties for violation of these ordinances); Neb. Rev. Stat. § 14-102.01 (1991) (cities of metropolitan class may make ordinances as are necessary or expedient for maintaining the welfare of the city and for promoting public health and safety); Neb. Rev. Stat. § 16-225 (1991) (first-class cities may impose fines and penalties for the breach of any ordinance); Neb. Rev. Stat. § 17-505 (1991) (second-class cities and villages have power to make ordinances that are expedient for maintaining the corporation's welfare and to impose fines and penalties for breach of these ordinances).

Therefore, provided that the municipalities with which you are concerned have the general police power to enact ordinances which impose penalties for violations of the municipalities' electrical wiring ordinances, LB 193, § 22, does not require cities to impose a penalty for violations of the cities' electrical wiring ordinances that is identical to that provided in LB 193, § 33.

Sincerely,

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Approved By:

Attorney General

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