

July 23, 1996

Honorable Gary J. Schroeder
Idaho State Senate
STATEHOUSE MAIL
Boise, ID 83720

Honorable Tom LeClaire
Moscow City Council
206 E. Third
Moscow, ID 83843

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Licensing Requirements for Electrical Installations

Dear Senator Schroeder and Councilman LeClaire:

The following is in response to your request for legal guidance relating to the licensing requirements for electrical installations.

QUESTION PRESENTED

Do local governments have authority to enforce local ordinances regulating who must be licensed to perform electrical installations if those ordinances conflict with the electrical licensing provisions of title 54, chapter 10, Idaho Code, and HRC 38?

CONCLUSION

No. Local ordinances regulating who must be licensed to perform electrical installations are preempted by state statute. The doctrine of state preemption over local ordinances applies where, despite the lack of specific statutory language preempting regulation by local governmental entities, the state has acted in the area in such a pervasive manner that it must be assumed that it intended to occupy the entire field of regulation.

ANALYSIS

Article 12, § 2 of the Idaho Constitution provides that local ordinances may not conflict with state statutes:

Local police regulations authorized.—Any county or incorporated city or town may make and enforce, within its limits, all such local police,

sanitary and other regulations as are not in conflict with its charter or with general laws.

In Envirosafe Serv. of Idaho v. County of Owhyee, 112 Idaho 687, 735 P.2d 998 (1987), the Idaho Supreme Court stated that the conflict prohibited by art. 12, § 2 of the Idaho Constitution could be either direct or implied. The court explained that the doctrine of implied preemption applied in situations where a statute did not expressly preempt local regulation, but acted in an area in such a pervasive manner that it must be assumed that the state had intended to occupy the entire field of regulation, or where uniform statewide regulations are called for because of the particular nature of the subject matter to be regulated. 112 Idaho at 689, 735 P.2d at 1000. *See also* Heck v. Commissioners of Canyon County, 123 Idaho 842, 853 P.2d 587 (Ct. App. 1992).

When it comes to regulating who must be licensed to make electrical installations in the State of Idaho, the statutory provisions of title 54, chapter 10, Idaho Code, leave little doubt that the legislature intended to occupy the entire field of regulation and intended to establish uniform statewide regulations regarding licensing. For example, I.C. § 54-1003A defines a journeyman electrician as “any person who personally performs or supervises the actual physical work of installing electrical wiring or equipment to convey electrical current, or apparatus to be operated by such current” I.C. § 54-1002(2) makes it “unlawful for any person to act as a journeyman electrician in this state until such person shall have received a license as a journeyman electrician” By applying the statutes to “any person” engaging in this statutorily defined activity, the legislature made clear its intent to occupy the field.

The legislature also made it clear that regulatory authority over who needed to be licensed to make electrical installations would not be shared. For example, I.C. § 54-1006 authorized the Idaho Electrical Board to promulgate rules for the “examination and licensing of journeyman electricians.” And, I.C. §§ 54-1005, 54-1007 and 54-1009 give authority to a state agency, the Division of Building Safety, to issue, revoke or suspend licenses. Moreover, I.C. § 54-1017 makes it a misdemeanor criminal offense for any person to:

engage in the trade, business or calling of an electrical contractor or journeyman electrician, without a license as provided by this act, or who shall violate any of the provisions of this act, or the rules of the Idaho electrical board or of the administrator of the division of building safety herein provided for, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time; or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator

As a result of the statutory requirements of title 54, chapter 10, Idaho Code, local governments could not allow an unlicensed person to perform electrical work requiring a state license. To do so would be contrary to the provisions of I.C. § 54-1002(2) and the criminal provisions of I.C. § 54-1017. Likewise, a local government could not prohibit an individual from engaging in electrical work for which that individual was licensed. To do so would effectively nullify the state license and directly interfere with the authority of the Idaho Electrical Board and the Division of Building Safety to determine who must be licensed to conduct electrical work.

Further, the statutory authority of the Idaho Electrical Board and the Division of Building Safety to promulgate and enforce administrative rules would necessarily extend the state's preemption authority to any administrative rules implementing the electrical licensing statutes promulgated by the Idaho Electrical Board and to any amendments to those rules by the legislature. As provided by I.C. § 67-5291, the legislature may, by concurrent resolution, amend or modify an administrative rule, "where it is determined that the rule violates the legislative intent of the statute under which the rule was made." This is what the 1996 Idaho Legislature did when it passed HCR 38. The legislature made a specific finding that IDAPA 07.01.01.013.01 was not consistent with legislative intent and amended it to grant an exemption from the electrical licensing requirements to "persons making electrical installations on their own residential rental property or on their own primary or secondary residence and associated buildings." This legislative amendment to IDAPA 07.01.01.013.01 was promulgated by the Idaho Electrical Board and became effective on July 1, 1996.

From the foregoing, it is clear that the licensing requirements of title 54, chapter 10, Idaho Code and the administrative rules of the Idaho Electrical Board were intended to occupy the entire field and to create a uniform statewide system for regulating the licensing of individuals doing electrical work in the State of Idaho. Any conflicting local ordinance would be preempted by state law.

Sincerely,

CRAIG G. BLEDSOE
Deputy Attorney General
Civil Litigation Division