



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
250 Washington Street, Boston, MA 02108-4619

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February 13, 1997

Anthony F. Papillo, Esq.  
Boston Inspectional Services  
1010 Massachusetts Avenue  
5th Floor  
Boston, MA 02118

Re: 105 CMR 410.000 et seq. ("Sanitary Code") and submetering of utilities by owners of residential properties

Dear Mr. Papillo:

I am writing in response to your inquiry dated January 16, 1997, requesting that the Department of Public Health ("Department") issue an opinion with regard to:

"[w]hether the Sanitary Code allows for a Landlord to charge Tenants for hot water and/or heat used where the means of measuring gas output to such heat is based on a system which is,

- (a) not provided by any authorized public utility company, and
- (b) installed, maintained and read solely by the Landlord or the Landlord's employees or agents."

The Sanitary Code in 105 CMR 410.354 requires that:

- (A) The owner shall provide the electricity and gas used in each dwelling unit unless
  - (1) Such gas or electricity is metered through a meter which serves only the dwelling unit...; and,
  - (2) The rental agreement provides for payment by the occupant.
- (B) If the owner is required, by 105 CMR 410.000 or by a rental agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit, then

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such electricity or gas may be metered through meters which serve more than one dwelling unit.

(C) If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling units is metered through meters which serve only such dwelling unit...

The Department interprets the word meter to mean a meter installed, inspected, maintained, and read by a utility company subject to the jurisdiction of the Massachusetts Department of Public Utilities ("DPU"). The Department's interpretation is based on the following:

1. The Department of Public Utilities does not permit the reselling of utilities or submetering, Boston Real Estate Board v. Department of Public Utilities, 334 Mass 477, 136 N.E.2d 243 (1956). Since submetering takes the provision of the utility out of the control of the utility company and in essence places it in the control of the owner, it is not possible for the utility company to verify whether or not the owner is reselling the utility. Moreover, it is not possible to verify the accuracy of the submeter or whether the tenant is paying for the actual use.

2. The Department's interpretation is consistent with the Department of Public Utilities regulatory scheme:

(a) The Department of Public Utilities requires sample testing of meters to determine accuracy and establishes sample test procedures for meters (see e.g., c. 164 §§ 103, 114, 115, 115A, 120, and 122, and 220 CMR 36.01). Indeed, there are penalties for the failure to properly test meters. See, M.G.L. c. 164, § 113. Submetering by owners of residential buildings avoids such testing requirements, thus, undermining the intent of these provisions; and,

(b) The Department of Public Utilities provides for customers aggrieved by any action related to billing and termination procedures to request a hearing before DPU (See, 220 CMR 25.00). However, a tenant, whose landlord (owner) installed a submeter, is not a customer of the company as defined in the regulations and, therefore, would not be entitled to a hearing before DPU. The tenant would have no means by which to ascertain the accuracy of the reading nor to challenge the reading made by the landlord (owner).

3. The plain language of the Sanitary Code also supports this interpretation. There is no language in the Sanitary Code that permits or suggests that an owner may superimpose his/her own submetering system on an existing meter. To the contrary, 105 CMR 410.354(C) provides in pertinent part that: "[i]f the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit..." (emphasis supplied). If

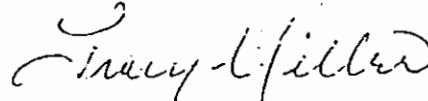
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the Sanitary Code permitted the owner to submeter, it would state that the owner shall install and maintain wiring, piping, and submeters. However, the discussion of meters, as it relates to an individual dwelling unit, is in a clause separate from the clause describing the owner's obligations, indicating that the meters are to be installed and maintained by a entity other than the owner.

For all the reasons stated above, the term meter as defined in the State Sanitary Code, 105 CMR 410.000, means a meter installed only by a utility company subject to the jurisdiction of the Massachusetts Department of Public Utilities. Thus an owner is required to pay for the electricity and gas for each dwelling unit in the premises, unless there is a separate meter installed, maintained, and read by a utility company and the rental agreement provides for payment by the occupant.

I trust that this letter adequately responds to your request. If you have any further questions please feel free to call me at (617) 624-5220.

Sincerely,



Tracy Miller  
Deputy General Counsel

cc: Howard Wensley, Director of  
Community Sanitation