

FROM: EXECUTIVE DIRECTOR BOARD OF STATE EXAMINERS OF ELECTRICIANS.

TO: LOCAL INSPECTORS OF WIRES

SUBJECT: **Statutory requirements for licensure and permitting of electrical work at carnivals, circuses, fairs and similar events.**

DATE: **July 24, 2006**

The Board of State Examiners of Electricians has been asked to provide its opinion relative to the application of the licensing and permitting provisions of the General Laws of Massachusetts and the Code of Massachusetts Regulations to the set up and operation of amusement rides, concession stands or other structures or buildings incidental to any carnival, circus, fair or similar event. In addition, because of the short life, in most all cases, of a carnival, circus, fair or other similar event, the Board has been asked to opine whether the five days afforded to electrical work permit applicants can be shortened for carnivals, circuses, fairs or other similar events.

This opinion will be broken down into three issues, and the request for opinion will be divided into three questions, accordingly. The questions for which an opinion is provided are as follows:

1. Whether a license is required by the General Laws of Massachusetts and the Code of Massachusetts Regulations for those individuals who perform the installation of wires, conduits, apparatus, devices, fixtures or other appliances (in essence performing electrical work) necessary for or incidental to providing lighting and power to amusement rides, concession stands, or to other structures or buildings incidental to carnivals, circuses, fairs and similar events. If in any instance no license is required for the performance of the electrical work, is the local Inspector of Wires authorized to inspect that work?
2. Whether an electrical permit application with the local Inspector of Wires is required to be filed in accordance with the provisions of the General Laws of Massachusetts and the Code of Massachusetts Regulations by those individuals who perform electrical work at carnivals, circuses, fairs and similar events. If in any instance no permit is required for the performance of the electrical work, is the local Inspector of Wires authorized to inspect that work?
3. Where a permit is required for electrical work performed at a carnival, circus, fair or other similar event, may a local city or town require that the permit be applied for before the start of the electrical work and that the electrical work be approved before the opening and operation of the carnival, circus, fair or other similar event?

RESPONSE TO QUESTION 1. General Laws section 1A of chapter 141 provides in its first paragraph in relevant part that “no person, firm or corporation shall enter into, engage in, or work at the business or occupation of installing wires, conduits, apparatus,

devices, fixtures, or other appliances for carrying or using electricity for light, heat, power, ..., unless such person, firm or corporation shall be licensed by the state examiners of electricians...”

The second paragraph of section 1A of chapter 141 of the General Laws qualifies the above provision. The second paragraph states, in relevant part, that the above quoted licensure requirement is inapplicable to “a person not engaged in the business described in this section who employs or contracts for the services of a person, firm or corporation engaged in such business; ...or to an agent, employee or assistant of a person, firm or corporation licensed in accordance with this chapter who does not engage in or perform the actual work described in this section.”

In addition, section 7 of chapter 141 of the general laws provides for the inapplicability of the provisions of chapter 141 to several well defined circumstances. None of the circumstance addressed by this opinion is exempted by section 7 from the applicability of the provisions of chapter 141.

Applying those provisions to the present circumstances, the first question that needs to be resolved is whether the owner of the carnival, circus, fair or similar event is engaged in the business of installing wires, conduits, apparatus, devices, fixtures, or other appliances for carrying or using electricity for light, heat or power. While it seems clear that the owner of the carnival, circus, fair or similar event is not so engaged, someone employed by or contracted by the owner is *engaged* in or performing the electrical work. As such, that person must, in accordance with the provisions of the first paragraph of section 1A of chapter 141, be licensed by the board of examiners.

The above answer does not entirely resolve the issue. The underlying issue which also must be resolved is whether the person employed by or contracted by the circus, carnival, fair or other similar event is *engaged in or performing the installation of wires, conduits, apparatus, devices, fixtures or other appliances for carrying or using electricity for light, heat or power.*

This issue was addressed by the Supreme Judicial Court in *Simon v. State Examiners of Electricians*, 395 Mass. 238, 479 N.E.2d 649 (1985). In that case, the court indicated that what it referred to as “hard wiring,” specifically “the installation of wires that carry and supply electricity as an end product” is within the board of examiners powers to regulate. The court stated further that simply inserting a two pronged plug into a receptacle installed by a licensed electrician is not within the board of examiners power to regulate. That, the court found, is simply providing a product that uses electricity as a source of power.

Given the SJC’s decision in *Simon*, it appears clear that the phrase “installation of wires, conduits, apparatus, devices, fixtures or other appliances for carrying and using electricity for light, heat or power” as used in section 1A of chapter 141 is not to be construed as without limit in defining the activities requiring a license as issued by the board to engage in the performance of such work. Clearly, a license issued by the board of examiners is not required to simply plug in to a receptacle outlet a product that uses electricity as a

source of power. Just as clearly, installing wires and other materials that carry and supply electricity as an end product for ultimate use by products that use electricity as a source of power does require a license issued by the board of examiners.

Applying that distinction to the circumstances presented here, a license to engage in electrical work is required where the installer is installing wires and other items that carry and supply electricity as an end product for use by products that use electricity as a source of power, such as amusement rides, concession stands, or other structures or buildings incidental to carnivals, circuses, fairs or other similar events. However, where an individual is doing nothing more than plugging into a receptacle outlet a product that uses electricity as a source of power, such as plugging an electrically powered blower into a receptacle outlet previously installed by a licensed electrician to inflate a device used for bouncing or jumping, or plugging into a receptacle outlet previously installed by a licensed electrician a cord which supplies the electricity to a small carnival ride, then no license is required.

Where more than simply plugging a product into an outlet is involved, such as the proper grounding of a product where such grounding is required for the safe operation of the product, or installing wires, a license is required.

RESPONSE TO QUESTION 2. In essence, the second issue is whether a notice of commencement and a notice of completion of electrical work, referred to here as a permit, is required to be filed with the local inspector of wires for electrical work, as defined above, performed at carnivals, circuses, fairs and similar events?

Section 3L of Chapter 143 of the General Laws states the permitting requirement for electrical work. It states, in pertinent part, as follows: “No person shall install for hire any electrical wiring or fixtures subject to this section without first or within five days after commencing the work giving notice to the inspector of wires appointed pursuant to the provisions of section thirty-two of chapter one hundred and sixty-six.”

Inspectors of wires are appointed by cities and town pursuant to section 32 of chapter 166 of the general laws of Massachusetts. By the terms of that section, local inspectors of wires “shall supervise every wire over or under the streets or buildings...and every wire within or supplied from buildings or structures subject to the provisions of chapter one hundred and forty-three, and the state building code, except wires within a manufactured building or building component as defined by the state building code and inspected in accordance with rules and regulations promulgated by the building code commission.”

Section 96 of chapter 143 of the general laws states that “the state building code shall incorporate any specialized construction codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair or demolition promulgated by and under the authority of the various boards which have been authorized from time to time by the general court.”

The second paragraph of section 96 goes on to state that “(t)he specialized codes referred to in this section shall include, but not be limited to, the ...electrical code, ..., fire prevention regulations...”

Given that language, the state building code includes the electrical code, and because a local inspector of wires has jurisdiction over any structure subject to the provisions of chapter 143 and the state building code, then as long as the electrical code is applicable to amusement rides, concession stands or other structures or buildings incidental to any carnivals, circuses, fairs and similar events.

The electrical code in the Commonwealth of Massachusetts is promulgated by the Board of Fire Prevention Regulations (“BFPR”). It is found at 527 CMR 12.00. In general, except for the Massachusetts exceptions identified in 527 CMR 12.00, the Commonwealth of Massachusetts adopts the National Electrical Code.

In adopting that code, along with its Massachusetts exceptions, the Commonwealth also adopted, as it relates to the purposes of the electrical code, a more broad definition of the term “structure” than exists in the state building code. For purposes of the state electrical code, a structure is defined as “(a) combination of materials assembled at a fixed location to give support or shelter.” For purposes of the state electrical code, amusement rides, or other structures commonly found at circuses, carnivals and fairs are considered “structures.”

Even more specifically, the national electrical code, at chapter 5, article 525 sets minimum provisions for carnivals, circuses, fairs or similar events. In addition article 590 of the national electrical code addresses temporary wiring as may be found at a circus, carnival or fair, and article 680 of the national electrical code sets minimum provisions for water related rides as also may be found at circuses, carnivals and fairs. The existence within the national electrical code of provisions specific to carnivals, circuses, fairs and similar events lends further support to the applicability of the code to electrical work performed at such events, and to the necessity of securing permits for such events.

Where the installer is providing grounding or the bonding of electrical equipment at each individual ride as required by the code for wires that plug into receptacles, or installing wires and other items that carry and supply electricity for end use by products that use electricity as a source of power, such as amusement rides, concession stands, or other structures or buildings incidental to carnivals, circuses, fairs or other similar events, a license to perform such installation is required, and a permit to perform such installation must be obtained in accordance with the provisions of section 3L of chapter 143 of the general laws.

If an employee of the carnival, circus, fair or other similar event is performing the installation of wires that supply electricity, then that employee is considered to be performing that installation “for hire,” even if that person is employed to perform other duties and responsibilities by the owner of the circus, carnival, fair or other similar event. The phrase “for hire” is considered to include either an employer/employee relationship or a contractual relationship where the duties defined by the relationship include the

installation, for any form of consideration, of wires or other items to supply electricity as described above.

Therefore, it is clear that permits are required to be obtained where wires or equipment are installed that supply electricity as the end product, and where more is done than simply plugging into a standard receptacle a product that uses electricity as its source of power. No permit is required where all that is done by the installer is plugging into a receptacle outlet previously installed by a licensed electrician a product that uses electricity.

However, it is instructive to note the limited circumstances where licenses and permits are not required. As indicated by the analysis of section 1A of chapter 141 provided above, the local inspector of wires does not have jurisdiction over and can not require a permit from an individual who does nothing more than plug in to an outlet which has been installed by a licensed electrician a product that uses electricity as a source of power. As an example, plugging an electricity powered blower into an outlet previously installed by a licensed electrician to inflate a device used for bouncing or jumping, or plugging into an outlet previously installed by a licensed electrician a cord which supplies the electricity to a small carnival ride is not an act requiring licensure or permitting. That individual is not “installing for hire any electrical wiring or fixtures” and that individual is not entering into, engaging in, or working at the business or occupation of installing wires, conduits, apparatus, devices, fixtures, or other appliances for carrying or using electricity for light, heat or power as an end use. Rather, that individual is simply plugging in to an electrical outlet previously installed by a licensed electrician a product that uses electricity as an end use. Consequently, on those facts, no license is required to engage in those limited activities, and no permit is required to engage in those activities.

It is also instructive to note that under all circumstances noted above, whether a permit or license is required or not, an inspector of wires is authorized by the language of section 32 of chapter 166 of the general laws to take note of any attachment, insulation, support or appliance attached to any wire over which he has jurisdiction is improper or unsafe, and notify the person owning or operating any such wire.

Even in circumstances where no permit and no license is required, and where as a result a local wire inspector may not have jurisdiction over the “installation of wires” the above language of section 32 may be interpreted to authorize a local inspector of wires who has come into possession of information of improper or unsafe attachments, such as but not limited to the insulation of, support of, or appliances attached to any electrical wires, and including the failure to provided the continuity assurance of grounding conductors at portable rides, as provided by the NEC, to notify the person owning or operating such wire, as well as other officials whose jurisdiction may extend generally over such wire. A building inspector, fire official, or a state inspector of amusement rides who is notified of such a potentially dangerous situation could take action related to matters within his jurisdiction, including his issuance of the permit to operate a carnival, circus, fair or other similar event. That action could include suspending the permit until the dangerous situation is corrected.

RESPONSE TO QUESTION 3: Question 3 asks whether it is ever permissible to require that an application for an electrical permit be submitted before the electrical work at a carnival, circus, fair or similar event is commenced and that the electrical work be approved before the carnival, circus, fair or similar event may be operated.

Section 3L of chapter 143 of the general laws provides that “(n)o person shall install for hire any electrical wiring or fixtures subject to this section without first or within five days after commencing the work giving notice to the inspector of wires appointed pursuant to the provisions of section thirty-two of chapter one hundred and sixty-six.”

Where, consistent with the analysis above, a permit is required, the language of section 3L of chapter 143 seems clear: The person who would need to apply for the permit has 5 days to apply for that permit.

However, there is nothing to prevent a city or town official responsible for issuing a permit to operate a circus, carnival, fair or other similar event, by whichever regulatory vehicle it determines is appropriate, from requiring that as a condition to being issued a permit to operate a circus, carnival, fair or other similar events, all other necessary permits, including any electrical permits required pursuant to M.G.L. chapter 143, section 3L, be applied for and received before the permit to operate the carnival, circus, fair or other similar event will be issued. In this case, given that a carnival, circus, fair or other similar event may be set up, operated, broken down and gone before five days, it seems appropriate that such a requirement or condition to issuance of the permit be enacted. Moreover, it seems particularly appropriate to do so in the context of the electrical installations that are inherent to the operation of a carnival, circus, fair or similar event and their associated amusement rides and concession stands. An uninspected electrical installation involving any number of flaws in connection, insulation, grounding, or substandard fixtures or wires could result in serious injury or death from electrical shock or fire.