

The Commonwealth of Massachusetts

DEPARTMENT OF CIVIL SERVICE AND REGISTRATION,
STATE EXAMINERS OF ELECTRICIANS,
ROOM 406, 15 ASHBURTON PLACE, BOSTON, December 6, 1944.

To the General Court of Massachusetts.

In accordance with the provisions of section 33 of chapter 30 of the General Laws, as amended, a copy of the recommendations for legislation to be contained in the annual report of the State Examiners of Electricians (Pub. Doc. No. 114) is submitted together with drafts of bills embodying the legislation recommended. These drafts have been submitted to the Counsel to the House of Representatives as required by law.

EDWARD H. WHITTEMORE,
Chairman,

JULIUS E. WARREN,
THOMAS J. GREEHAN,
BERTRAM L. WHITTEMORE,
SAMUEL J. DONNELLY,
State Examiners of Electricians.

HARRISON C. WITHERELL,
Executive Secretary.

RECOMMENDATIONS.

1. In the experience we have obtained in the enforcement of the provisions of chapter 141 of the General Laws, we have found that the courts do not always interpret that chapter in accordance with what we believe to have been the intent of the General Court when they enacted the original electricians' license law as chapter 296 of the General Acts of 1915. This hinges on the meaning of the word "business." We believe that the word "business" was used solely to limit the requirement of a license to transactions in which the property owner or occupant, for some consideration, employed another to perform electrical installations for him, and to exempt the owner or occupant from obtaining a license to make electrical installations for his own convenience and comfort. While most courts will find an unlicensed defendant guilty upon evidence that he performed electrical work for a consideration, there have been several cases where courts have rendered a decision of not guilty upon such evidence.

The most recent case was a decision in a jury-waived session of the Superior Court, on an appeal from a guilty finding in a district court. The evidence in this case showed that the defendant had a place of business in a city where he manufactured and serviced electric signs. As a result of a telephone call from an officer of a social organization in a neighboring town the defendant went to the building of the organization, met the officer and gave him a quotation for furnishing and installing about 30 feet of high-voltage luminous tubing, insulators, wires, a transformer and all apparatus necessary to make the installation provide light in the premises, except the circuit for supplying current to the transformer, which the

officer agreed would be supplied by the organization. The evidence showed that he carried out his agreement and furnished and installed the apparatus, and demonstrated that it would provide light by connecting the transformer to a source of electric current by means of a cord, and then accepted a portion of the price agreed upon.

A complaint was entered in the district court which charged that he entered into, engaged in and worked at the business of installing wires, etc., for lighting purposes without a license from this Board, under section 1 of chapter 141, General Laws. There was no disagreement as to the facts upon which the complaint was brought. The defendant's attorney argued that this isolated case did not constitute "engaging in business." He contended that:

(1) The word "business" must be given the meaning which it has acquired in the law. (General Laws, chapter 4, section 6.)

(2) The word "business" means more than an isolated act, and cited *Commonwealth v. White*, 260 Mass. 300; *Commonwealth v. Schwartz*, 197 Mass. 107; and *H. Goodowsky v. S. Rubinstein and another*, 225 Mass. 448.

The following case was also argued, *Commonwealth v. Sovrensky*, 269 Mass. 460. The court made a finding of guilty which was appealed. The defendant presented the same arguments in the Superior Court and obtained a finding of not guilty.

There have been several other not guilty findings after the decisions referred to above have been cited. How many guilty findings would have been changed to not guilty if the defendant had not pleaded guilty we have, of course, no means of knowing. There appears to be a clear distinction between doing a certain act and engaging in the business of doing that act.

We believe that it was the intent of the General Court to protect the public from the hazards of electricity by requiring that all persons performing such work should have first proven their qualifications and skill by an

examination, and also to protect it further by providing that any license could be suspended or revoked if the licensee installed work in an improper and unsafe manner.

There are many cases where itinerant persons install work, sometimes from distant States. If a correct interpretation of chapter 141 allows an unlicensed person to make installations until he is detected, and then is not subject to prosecution unless one or more other installations are discovered, the statute is not a serious deterrent to unlicensed persons. There are many persons who conduct business over an area comprising the jurisdictions of several courts. It is a moot question whether evidence of an act done in the jurisdiction of one court can be presented in the court of another jurisdiction. There is also the question of how much time can elapse between the isolated cases.

We believe that this statute should be clarified so that there will be as little chance as possible for confusion as to its intent. It is unfair to the courts; to the persons who engage in or work at installing wires, etc., both those now licensed and those whose occupation requires occasional electrical work; and to this Board and its agents, who are endeavoring to enforce the statute. It is not conducive to the peace of the Commonwealth to have some unlicensed persons plead guilty to working without a license, and to have others, who have done exactly the same thing, be found not guilty because they obtained counsel and cited the decisions referred to above. We question whether agents of this Board should institute prosecution in any case unless it appears that the evidence will satisfy the meaning of the word "business" which it has acquired in the law.

For these reasons we recommend an amendment to sections 1 and 8 of chapter 141, which will strike out the word "business" and explicitly allow owners and tenants of dwelling houses to perform electrical work for the comfort and convenience of themselves and their families without being required to qualify for licenses.

2. We again recommend that chapter 166 of the General Laws be amended so as to require that all persons

installing electrical work first give notice of their intention to the inspector of wires of the city or town where the work is to be performed. Provision should be made so that any one regularly employing journeymen on their own premises and property could give advance notice of their intention to install for a reasonable period so as not to cause unnecessary delay and to avoid an excessive number of notices. We also believe that provision should be made, for the 241 towns which have failed to appoint inspectors of wires, for similar notices to be given to persons appointed by the several selectmen to receive them.

At present notices are required in the city of Boston by chapter 268 of the Acts of 1898 and subsequent amendments. In the other cities and in some towns notices are required by ordinance or by-law, many of which seem to be invalid because of requiring compliance with the National Electrical Code (see 239 Mass. 540), or because of requiring a permit before the start of any work (203 Mass. 241). Many towns have inspectors but no by-law to require work to be submitted for inspection. The special act of Boston is difficult to enforce because of the many amendments, and is limited to work "within" buildings. Ordinances and by-laws are difficult to enforce because a certified copy should be obtained from the clerk every time a violation is prosecuted.

This Board is interested in this subject because the most frequent complaint we receive from inspectors against licensed electricians is that they have failed to give notice before performing work. The rules and requirements of this Board require compliance with all general and special laws and with all municipal ordinances, and any complaint from an inspector may result in action towards the suspension or revocation of the license of the offender if he refuses to comply. It is therefore important that we know we are proceeding on valid law when we commence action against a licensee. A similar recommendation was made in our report for 1942. This became House Bill, 696 (1943), and was referred to the Recess Commission on Safety of Persons in Buildings,

who are to report to the 1945 General Court. As there was objection to some parts of this bill we recommend as an alternative the bill herewith submitted.

The proposed amendments to chapter 141 and to chapter 166 have been approved by the Counsel to the House of Representatives.

