

BEFORE THE STATE ELECTRICAL BOARD
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0052-ELE REGARDING:

THE PROPOSED LICENSURE DENIAL)	Case No. 400-2006
FOR MASTER ELECTRICIAN LICENSE)	
OF ERIK GASKELL, Applicant.)	PROPOSED FINDINGS OF FACT
)	CONCLUSIONS OF LAW AND
)	BOARD DECISION

* * * * *

I. INTRODUCTION

Hearing Examiner Terry Spear convened a telephonic final pre-hearing conference on November 3, 2005. Lorraine Schneider, Agency Legal Counsel, appeared for the Department of Labor and Industry. Erik Gaskell appeared on his own behalf. The parties argued the pending motion for summary judgment that the department had filed and briefed.

The parties agreed that the motion for summary judgment would be dispositive of this case, based upon the record, without the necessity of an evidentiary hearing. The issue addressed by the parties in both the motion and entirety of the documents they filed is whether the existing statutes and regulations properly require 4 years of practical journeyman experience as a prerequisite for Gaskell to take the master electrician's examination, and if so, whether any of the communications and publications upon which Gaskell relied constitute a waiver or otherwise estop enforcement of the statutes and regulations to deny Gaskell that opportunity. The parties jointly submitted the case for a proposed board decision at the conclusion of oral argument, agreeing that the Hearing Examiner could determine the applicable facts from the documents of record in the contested case hearing file.

II. ISSUE

The parties do not dispute that Gaskell lacks 4 years of practical experience as a journeyman electrician (he clearly has more than 4 years practical experience as an electrician, but not as a journeyman electrician). Therefore, the issue for this case is the estoppel issue. A related issue addressed herein is whether the Hearing Examiner

has the authority to consider and decide if the Board's rules exceed or conflict with the Board's statutory authority.

III. FINDINGS OF FACT

1. Gaskell obtained general license information from the Montana State Electrical Board's web site regarding licensure as a master electrician. The information appeared to indicate that an applicant seeking to take the test to qualify as a master electrician license had to show, as one of the alternative sets of prerequisites, successful graduation from a recognized post secondary electrical trade school and "at least 4 years (8,000 hours) practical experience in the electrical field." Gaskell then obtained the license application and directions ("Application Procedure for Montana Electrical License") from the Board. The directions included the same alternative set of prerequisites to take the exam—successful graduation from a recognized post secondary electrical trade school and "at least 4 years (8,000 hours) practical experience in the electrical field."

2. Gaskell concluded that he met the requirements to take the Master Electrician examination. He invested time and money in developing a business plan and business in which he would pursue a career as a master electrician.

3. Gaskell applied to the Board for licensure as a master electrician in June 2005. He documented successful completion of a 2-year Electrical Technology course of study and training at the Perry Technical Institute in Yakima, Washington, together with licensure as a journeyman electrician in the state of Washington in February of 2003 and in the state of Montana in May 2003. He documented 4,055.5 hours of subsequent practical experience as a journeyman electrician and 4,765 hours of prior practical experience as an apprentice electrician.

4. The Board denied his application (refusing to permit him to take the examination), because he did not have 4 years of practical journeyman level experience together with his successful graduation from a recognized post secondary electrical trade school.

IV. DISCUSSION

Montana law requires that an applicant for a Montana master electrician's license "shall furnish written evidence . . . that the applicant is a graduate of an electrical trade school and has at least 4 years of legally obtained practical experience in electrical work." Mont. Code Ann. § 37-68-304(1). The Montana Legislature has

delegated to the State Electrical Board the power to adopt rules for the administration of Chapter 68, Title 37, including rules for examination and licensing of master electricians. Mont. Code Ann. § 37-68-201(3)(a).

The Board has adopted the pertinent requirement that an applicant for a master electrician's license satisfactorily establish that he "is a graduate of a two year minimum electrical trade school and has at least four years of practical journeyman level experience." Admin. R. Mont. 24.141.506(1)(b) [emphasis added]. Despite his reasonable reading of the application materials, Gaskell did not meet the Board's requirements to take the master electrician's exam.

When the courts review administrative decisions, the agency's interpretation of the law it administers is presumed to be controlling, so long as its rules are consistent with rather than in conflict with the statute. *Christenot v. State Dept. of Commerce* (1995), 272 Mont. 396, 901 P.2d 545, 548. However, within the administrative process, the applicable rules are controlling. *Laudert v. Richland County Sher. Off.*, ¶ 40, 218 MT 2000, 301 Mont. 114, 125, 7 P.3d 386, 394 (when the statute authorized discretionary monetary recovery against the respondent, and a properly adopted regulation exercised the agency's discretion by denying any such recovery upon proof of "mixed motive," the department properly followed its own regulation rather than the discretionary language of the statute and denied the recovery upon proof of mixed motive).

In short, any question of whether the Board acted beyond its authority in requiring 4 years of journeyman level practical experience to take the master's license test is beyond the scope of what the Hearing Examiner can address, acting on behalf of the Board in reaching a proposed decision. The Board has exercised its expertise and discretion in adopting the rule. The rule governs. It is for the courts to decide whether the rule is somehow inconsistent with the statute.

Similarly, the courts have the power to decide that an administrative agency is estopped to enforce its rules or even the law (the statutes). The agency itself, on the other hand, has only the powers it is granted by the legislature, and therefore must follow the statute and its regulations. *Laudert, supra*. If Gaskell reasonably relied, to his detriment, upon the information he obtained from the Board, he must ultimately seek relief from the courts. The Hearing Examiner cannot and will not decide the issue. In this context, Gaskell reasonably read the application materials to require 4 years of total practical experience rather than 4 years of journeyman practical experience. He apparently did not read the regulation itself, which clearly stated the requirement for 4 years of practical experience as a journeyman. Thus, the question of

reasonable reliance upon the application materials is an open question, but not one to be decided in this proceeding.

V. CONCLUSIONS OF LAW

1. Erik Gaskell did not show the requisite practical experience qualifications to take the State Electrical Board's master electrician's examination. Therefore, the Board should deny his application (*i.e.*, refuse to give him the examination). Mont. Code Ann. § 37-68-304(1); Admin. R. Mont. 24.141.506(1)(b).

VI. RECOMMENDED ORDER

Erik Gaskell's application for a master electrician's license is denied for lack of the required 4 years of practical experience as a journeyman.

DATED this 28th day of November, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ TERRY SPEAR
TERRY SPEAR
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.