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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 22 1993
DEPT. OF JUSTICE

DATE: September 17, 1993

SUBJECT: Definition of "Commercial Companies" under LB 193

REQUESTED BY: Terry L. Carlson, Executive Director
State Electrical Board

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have asked whether premises such as nursing homes and hospitals fit the definition of "commercial companies" as found in 1993 Neb. Laws LB 193, § 20, which amends section 81-2121(1) of the State Electrical Act ("Act"), Neb. Rev. Stat. §§ 81-2101 to 81-2145 (1987, Cum. Supp. 1992, & 1993 Neb. Laws). Under section 20 of LB 193, employees of commercial companies who perform manufacturing, installation, and repair work for such employers are not required to hold electrical licenses to perform electrical work while acting within the scope of their employment.

COMMERCIAL COMPANIES

The term "commercial companies" is not defined in LB 193 or elsewhere in the Act. Because the term "commercial companies" could have more than one reasonable meaning, it is ambiguous and therefore must be construed. ***Iske v. Papio Natural Resources Dist.***, 218 Neb. 39, 352 N.W.2d 172 (1984) (statutory provisions open to construction when language is ambiguous).

When a statute is ambiguous and therefore open to construction, legislative intent must be determined. Legislative history may be examined to determine this intent. ***Pump & Pantry, Inc. v. City of Grand Island***, 233 Neb. 191, 444 N.W.2d 312 (1989).

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In this case, the legislative history of LB 193 is inconclusive regarding the Legislature's intended meaning of "commercial companies." Since the Legislature's intended definition of "commercial companies" cannot be ascertained, we must utilize the rules of statutory construction which provide that words shall be construed and understood according to the common and approved usage of the language. However, if a word has acquired a peculiar meaning in the law, it must be construed according to that meaning. Neb. Rev. Stat. § 49-802(5) (1989).

The term "commercial" has acquired a peculiar meaning in the law. "Commercial" may have a broad or narrow meaning, with the narrow meaning of the term including only enterprises engaged in the purchase, sale, or exchange of goods and commodities or those engaged in the buying and selling of goods and services. The broad meaning encompasses all business. ***Reiser v. Meyer***, 323 S.W.2d 514 (Mo. Ct. App. 1959); ***City of Sioux Falls v. Cleveland***, 75 S.D. 548, 70 N.W.2d 62 (S.D. 1955). Furthermore, the term "commercial" is given different meanings under varying circumstances and the meaning depends on the circumstances under which the term is used. ***Reiser***, 323 S.W.2d 514 at 521.

For purposes of LB 193, section 20, the word "commercial" is used in its restricted sense, based on the presumption that the Legislature intended sensible, rather than absurd, results. ***State v. Stein***, 241 Neb. 225, 486 N.W.2d 921 (1992); ***Houska v. City of Wahoo***, 235 Neb. 635, 456 N.W.2d 750 (1990); ***Weimer v. Amen***, 235 Neb. 287, 455 N.W.2d 145 (1990). If the term "commercial" were given its broad meaning in this circumstance, any business in Nebraska would be exempt from the electrical licensing requirements of the State Electrical Act. The result of such an interpretation would be to nearly destroy the effectiveness of the entire State Electrical Act. The narrow definition of "commercial" avoids absurdity and renders a more sensible result.

The common use of the word "company" is "a number of persons united for the same purpose, either in private partnership or as a business concern." Webster's New Universal Unabridged Dictionary 368 (2d ed. 1983).

Therefore, the phrase "commercial companies" in LB 193, section 20, means a number of persons united for the same purpose, either in private partnership or as a business concern, engaged in the purchase, sale, or exchange of goods and commodities.

NURSING HOMES AND HOSPITALS

Nursing homes are defined in Neb. Rev. Stat. § 71-6012 (1990), part of the Nebraska Nursing Home Act, and in §§ 71-2017.01 and 71-2017.03 (Cum. Supp. 1992 & 1993 Neb. Laws). Section 71-2017.03 provides that whenever the term "nursing home" is mentioned in any statute, unless otherwise designated, it shall be construed to refer exclusively to skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, and nursing facilities. The statutory definitions of each of these facilities establish that nursing homes, as defined under Nebraska law, are primarily devoted to providing medical and nursing care and related services to individuals for a variety of reasons, including illness, disease, injury, deformity, disability, convalescence, physical or mental infirmity, or developmental disability. § 71-2017.01.

Similarly, hospitals, as defined under Nebraska law, are devoted primarily to the diagnosis and treatment of patients and the rendering of medical and nursing care. § 71-2017.01(2) (defines hospitals for purposes of statutes prescribing basic standards for Nebraska hospitals).

Therefore, nursing homes and hospitals are not defined under Nebraska law as persons united for the same purpose, either in private partnership or as business concerns, engaged in the purchase, sale, or exchange of goods and commodities. While nursing homes and hospitals may buy or sell goods and commodities incidental to providing medical and nursing care and related services, we do not believe nursing homes and hospitals fall within the meaning of "commercial companies" for purposes of LB 193, section 20.

CONCLUSION

It is our opinion that nursing homes and hospitals are not defined under Nebraska law as persons united for the same purpose, either in private partnership or as business concerns, engaged in the purchase, sale, or exchange of goods and commodities. Therefore, nursing homes and hospitals are not "commercial companies" for purposes of LB 193, section 20, and employees of hospitals and nursing homes are not included in the exemptions provided in section 81-2121(1). Consequently, such employees are required to meet any relevant licensing requirements in the State Electrical Act while performing manufacturing, installation, and repair work within the scope of their employment.

We note that the State Electrical Act distinguishes between commercial companies and public-use buildings or facilities. LB 193, §§ 2(17), 20(1) & (5). Since hospitals and nursing homes are not commercial companies, it is possible they may be considered public-use buildings within the meaning of the Act. If hospitals and nursing homes are so characterized, our conclusion is the same; that is, employees of these entities are subject to the Act's electrical licensing and inspection provisions.

Sincerely,

DON STENBERG
Attorney General

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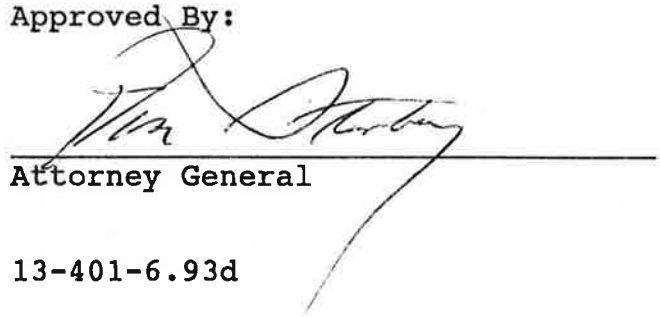
Assistant Attorney General

Approved By:



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