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STATE OF NEBRASKA
OFFICIAL
MAY 28 1992
DEPT. OF JUSTICE

DATE: May 26, 1992

SUBJECT: Impact of Neb. Rev. Stat. § 71-4606 on Manufacturing of Recreational Vehicles Intended for Sale in Canada

REQUESTED BY: Mark Horton, M.D., M.S.P.H.
Director of Health

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

You have asked whether Neb. Rev. Stat. § 71-4606 (Reissue 1990) prohibits the in-state manufacturing of recreational vehicles ("RVs") that do not meet Nebraska standards, but instead conform to Canadian standards and are intended to be delivered to and sold in Canada. Assuming the statute is constitutional, we conclude that § 71-4606 prohibits both in-state manufacturing and out-of-state delivery of RVs that do not meet Nebraska design, construction, and assembly standards, or standards equal thereto.

Under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, Neb. Rev. Stat. §§ 71-4601 to 71-4620 (Reissue 1990 & Supp. 1991), all RV design, construction, and installations after a certain date must conform to the standards adopted and approved by the Department of Health ("Department") when such RVs are "sold, offered for sale, or leased" in Nebraska. § 71-4604. Every RV manufactured after a certain date which is sold, offered for sale, or leased in Nebraska shall bear a seal issued by the Department certifying compliance with these standards. § 71-4604.01(1). The Department shall refuse to issue such seals to any manufacturer if the manufacturer's RVs do not comply with departmental standards. § 71-4609(3).

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Section 71-4606 extends requiring compliance with Department standards for RVs "sold, offered for sale, or leased" in Nebraska to mandating such compliance for RVs simply manufactured in Nebraska. Section 71-4606 provides in relevant part:

> If any other state has plumbing, heating, electrical, or body and frame design and construction codes for manufactured homes or recreational vehicles at least equal to those established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the department, upon determining that such standards are being enforced by such other state, shall place such other state on an reciprocity list, which list shall be available to any interested person. Any manufactured home or recreational vehicle which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which does not bear the seal issued by the department or by a state which has been placed on the reciprocity list shall not be permitted to be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor delivered from this state into any other state or jurisdiction. . . .

(Emphasis added.) If a manufacturer produces an RV that does not bear one of the seals discussed above, the manufacturer shall be guilty of a Class I misdemeanor. § 71-4608(1).

The purpose of these statutes is to maintain uniformity in RV design, construction, assembly, and use, and to ensure that RVs will not be manufactured or sold in this state when such RVs are unsafe because of noncompliance with Nebraska standards. § 71-4602; Committee on Public Health and Welfare, Hearing on LB 706, Nebraska State Legislature, 80th Sess. at 2 (Mar. 4, 1969).

Section 71-4606 clearly and unambiguously states that an RV that does not bear a Department seal indicating compliance with Nebraska standards, or compliance with the equal standards of another state, "shall not be permitted to be manufactured . . . anywhere within this state nor delivered from this state into any other state or jurisdiction." Your letter to this office indicates that Canadian RV standards are not equal to Nebraska standards.

Statutory language is to be given its plain and ordinary meaning, in the absence of anything indicating to the contrary. When statutory language is plain, direct, and unambiguous, no interpretation is necessary to ascertain its meaning. State v. Matthews, 237 Neb. 300, 465 N.W.2d 763 (1991); State v. Rios, 237 Neb. 232, 465 N.W.2d 611 (1991).

Assuming, as we do, that the statute at issue is constitutional, Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991) (legislative acts are presumed to be constitutional with all doubts resolved in favor of constitutionality), we conclude that the plain language of § 71-4606 prohibits in-state manufacturing, as well as out-of-state delivery, of RVs that fail to comply with Nebraska design and construction standards, or standards equal thereto. Therefore, this statute would seem to prohibit a Nebraska manufacturer from producing and delivering an RV that did not comply with Nebraska standards, and therefore did not bear a Department seal, but instead was constructed according to Canadian standards.

If the Nebraska Legislature had intended § 71-4606 to allow such manufacturing and delivery, it would have provided an exception to the statute. For instance, Mo. Ann. Stat. § 700.015 (Vernon 1988) states that Missouri's manufactured home, RV, and modular unit standards do not apply to those homes, RVs, or units "being built expressly for export and sold for use solely outside this state." The rules of statutory construction do not permit such an exception to be read into § 71-4606. Kellog Co. v. Herrington, 216 Neb. 138, 343 N.W.2d 326 (1984) (a meaning not warranted by legislative language will not be read into a statute; courts cannot supply missing language). Accord Gaughen v. Sloup, 197 Neb. 762, 250 N.W.2d 915 (1977). Likewise, language like that in § 71-4606 that is plain, direct, and unambiguous may not be read out of a statute. Id.

Although we were unable to locate any Nebraska case law interpreting § 71-4606, case law in other states construing similar statutes, or any helpful legislative history, our conclusion is consistent with Opinion of the Attorney General No. 86064 (Aug. 18, 1986). That opinion construed § 71-4606 to mean that "no recreational vehicle may be manufactured . . . anywhere in this state nor delivered from this state into any other state or jurisdiction unless it contains either a seal issued by the department or by a state on the reciprocity list." Id. at 2.

Sincerely,

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Approved By:

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13-136-6.92