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STATE OF NEBRASKA
OFFICIAL
MAY 28 1992
DEPT. OF JUSTICE

DATE: May 27, 1992

SUBJECT: Amending State Electrical Act to Include Wiring of Single-Family Dwellings in State Licensing and Inspection Requirements

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

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

You have requested our opinion regarding the use of a "grandfather clause" in the State Electrical Act ("Act"), Neb. Rev. Stat. §§ 81-2101 to 81-2145 (Reissue 1987 & Cum. Supp. 1990). The Act currently exempts the wiring of single-family dwellings from state licensing and inspection requirements. See Neb. Rev. Stat. §§ 81-2121(6) & 81-2124 (Reissue 1987); 100 Nebraska Administrative Code 15. However, the State Electrical Board ("Board") is considering amending the Act to require persons to hold an electrical license in order to wire single-family dwellings within state jurisdiction, and to make such wiring subject to state inspection. Because there are many carpenters not licensed under the Act who are currently installing wiring in single-family dwellings, you have asked whether the Board is "required" to issue electrical licenses under a grandfather clause to all persons now installing such wiring, even if they are not qualified electrical contractors or electricians.

The purpose of an exception or grandfather clause is to exempt from the statutory regulations imposed for the first time on a trade or profession those members thereof who are then engaged in the newly regulated field on the

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> theory that they who have acceptably followed such profession or trade for a period of years, or who are engaged therein on a certain date, may be presumed to have the qualifications which subsequent entrants to the field must demonstrate by examination.

State v. Knutson, 178 Neb. 375, 382, 133 N.W.2d 577, 582 (1965). Accord State ex rel. Krausmann v. Streeter, 226 Minn. 458, 33 N.W.2d 56 (1948). Grandfather clauses "have the effect of continuing a benefit upon those already receiving it while denying the benefit, or imposing additional burdens, upon the remainder of the class. This type of clause is often, and properly, used when occupations come for the first time under state regulation." O.C. Taxpayers for Equal Rights, Inc. v. Mayor and City Council of Ocean City, 280 Md. 585, 595, 375 A.2d 541, 547 (1977).

Grandfather clauses not involving a suspect classification, such as classifications based on race, religion, or alienage, City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976), and not restraining one's fundamental rights have been held not violative of equal protection if there is a rational relationship between a legitimate state interest and the statutory means selected to accomplish that purpose. Paul Kimball Hospital, Inc. v. Brick Township Hospital, Inc., 86 N.J. 429, 432 A.2d 36 (1981) (citing examples where grandfather clauses have survived equal protection attacks); Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991) (equal protection test). Because grandfather clauses are a practical necessity when a trade or profession is initially licensed and because such clauses reflect the general legislative policy that new regulatory schemes should be effective prospectively, grandfather exclusions are often viewed as having a rational basis and being consistent with equal protection principles. Paul Kimball Hospital, supra.

As long as the grandfather clause enacted by the Legislature is not constitutionally defective, "it is well within the legislative prerogative to provide that past business experience or practical training is a substantial equivalent of any licensing or examination requirement." Wisconsin Wine & Spirit Institute v. Ley, 141 Wis. 2d 958, 969, 416 N.W.2d 914, 919 (Ct. App. 1987). Accord Knutson, supra. Further, it is "within the province of the Legislature to provide how, in what manner, and in what period of time the grandfather right may be exercised." Knutson, supra at 382, 133 N.W.2d at 582 (1965). These cases indicate that it is within the Legislature's "prerogative" and "province" to enact a grandfather clause.

Therefore, the Electrical Board, through the Nebraska Legislature, is not required to provide a grandfather clause in the legislative scheme you have described, but it is certainly within the Legislature's power to do so.

Sincerely,

DON STENBERG
Attorney General

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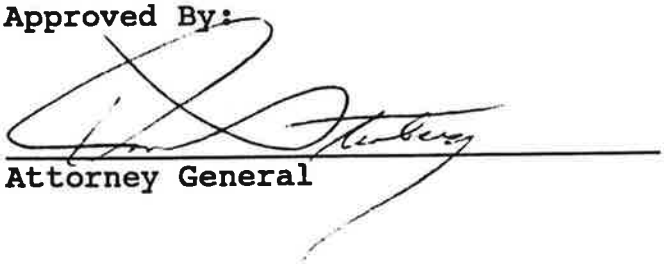
Approved By:



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