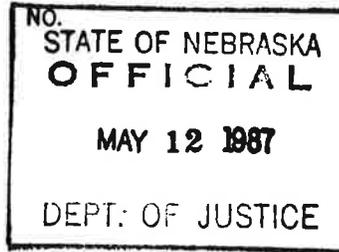


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

87071



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
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DATE: May 11, 1987

SUBJECT: Water Well Standards and Contractors'
Licensing Act, Neb.Rev.Stat. §§46-1201 et
seq.

REQUESTED BY: Gregg F. Wright, M.D., M.Ed.
Director of Health, Department of Health

WRITTEN BY: Robert M. Spire, Attorney General
Marilyn B. Hutchinson, Assistant Attorney General

You have asked several questions about who is subject to the above act. As discussed below, we have concluded that the standards for construction of water wells and installation of pumps and pumping equipment apply to everyone doing such tasks, whether they have to be licensed in order to do such tasks or not. In case of noncompliance, the Department's remedy is to enjoin them from such acts. All persons not specifically exempted from being licensed or certified in order to construct water wells or install pumps or pumping equipment on their own property must have such tasks done or supervised by a person licensed or certified by the Department. If the persons performing those functions are not licensed or certified they may be enjoined from doing so or charged with a crime or subjected to a civil penalty.

The purposes of the Water Well Standards and Contractors' Licensing Act are to provide for the protection of ground water through the licensing and regulation of water well contractors and pump installation contractors and the certification of water well drilling supervisors and pump installation supervisors, to protect the health and general welfare of the citizens of the state, to protect ground water resources from potential pollution by providing proper siting and construction of water wells and proper plugging of abandoned wells and to provide data on potential water supplies through well logs.

To help accomplish those purposes Neb.Rev.Stat. §46-1227 authorizes the Department of Health to adopt rules and regulations setting standards for the construction of water wells, for the installation of pumps and pumping equipment and

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for plugging of abandoned wells. "Such standards shall be applicable whether such activities are carried out by a water well contractor, a pump installation contractor, a water well drilling supervisor, a pump installation supervisor, or any other person." (Emphasis added.)

Construction of water wells shall mean and include all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Neb.Rev.Stat. §46-1206. "Water well" shall not include any excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried or for inserting media to repressure oil or natural gas bearing formations. Neb.Rev.Stat. §46-1212. "Well repairs" shall mean any change, replacement, or other alteration of any water well, pump, or pumping equipment or any other activity which requires a breaking or opening of the well seal. Neb.Rev.Stat. §46-1215.

Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the well location, including all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Neb.Rev.Stat. §46-1208.

After October 1, 1986, ~~no water well shall be~~ constructed or pump or pumping equipment installed by a business engaged in the construction of water wells or installation of pumps and pumping equipment unless the construction or installation is carried out or supervised by a licensed water well contractor, water well drilling supervisor, pump installation contractor, or pump installation supervisor.

Neb.Rev.Stat. §46-1233. The terms "water well contractor," "water well drilling supervisor," "pump installation contractor," and "pump installation supervisor," do not include an individual who installs or repairs pumps and pumping equipment for a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. Neb.Rev.Stat. §§46-1209, 46-1210, 46-1213 and 46-1214.

Water well contractors and pump installation contractors must be licensed by the Department of Health. Neb.Rev.Stat. §46-1229. Water well drilling supervisors and pump installation supervisors must be certified by the Department of Health. Neb.Rev.Stat. §46-1231. "Any person" who engages in construction of water wells or in the installation of pumps and pumping equipment without a license or certificate from the Department of Health may be enjoined from continuing such activities. Neb.Rev.Stat. §46-1238. "Any person subject to licensure or certification" who engages in the construction of water wells or in the installation of pumps and pumping equipment without such license or certification shall be guilty of a Class II misdemeanor or subject to a civil penalty. Neb.Rev.Stat. §46-1239.

Although Neb.Rev.Stat. §46-1240 makes it a crime for any person to construct a water well, install pumps and pumping equipment or fail to plug or to plug without complying with the rules and regulations setting the standards for doing so, this appears to be an improper delegation of legislative authority. See, Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 783, 104 N.W.2d 227 (1960). However, any person violating such standards "may be enjoined from continuing such activity, including a mandatory injunction." Neb.Rev.Stat. §46-1240.

1. You have listed various entities and individuals and asked which, if any of them, fall within the licensing provisions of the act.

None of them except an individual who is doing so on his or her own land which is used by him or her either for farming, ranching or agricultural purposes or for his or her abode may construct a water well or install a pump or pumping equipment unless such tasks are performed by or supervised by a licensed water well contractor, water well drilling supervisor, pump installation contractor or pump installation supervisor. Thus political subdivisions, the state and entities other than individuals holding land for farming, ranching or other agricultural purposes do not have to be licensed or certified themselves, but the person doing such work or supervising it must be licensed or certified. The entities or individuals who disturb the well cap or seal to provide chlorination services, water quality monitoring or electrical services or to plug an abandoned well do not need to be licensed or certified themselves, but they must work under the supervision of a person who is licensed or certified under this act.

2. If political subdivisions or state agencies fall within licensing provisions of the Act, are they subject to the civil or criminal penalties provided in Section 46-1239, or both?

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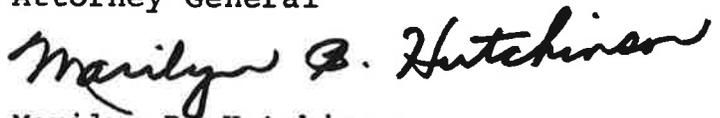
Not to the criminal penalties. Criminal acts are not imputed to another. However, they may be liable in a civil action under a theory of respondeat superior. If the state or a political subdivision has a water well constructed or a pump or pumping equipment installed, using persons who are not licensed or certified to do or supervise the work and who are not supervised by a person who is licensed or certified to do so, those persons are subject to both the criminal and civil sanctions in Neb.Rev.Stat. §46-1239. If such work is not done in conformity with the standards for doing so, both the state or the political subdivision and its workers, whether licensed or certified or not, may be enjoined from continuing such activity as provided in Neb.Rev.Stat. §46-1240.

3. Are municipal, county or state employees subject to the licensing requirements of the Act either as a contractor or as a supervisor? If so, who should be licensed or certified?

Any person (including municipal, county or state employees), who constructs a water well or installs a pump or pumping equipment, must be either licensed or certified to do so or be supervised by a person who is licensed or certified to do so.

Sincerely yours,

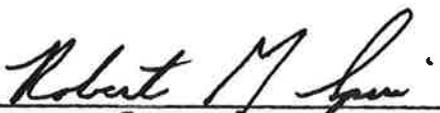
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