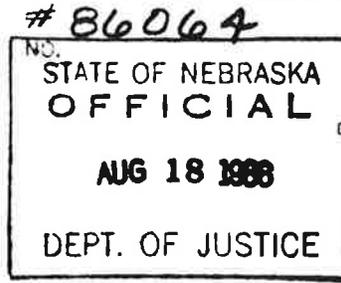


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: August 15, 1986

SUBJECT: Seals for a manufactured home, recreational vehicle or modular housing unit manufactured in this state

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

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

1. Whether a manufactured home, recreational vehicle or modular housing unit manufactured in this state but sold in another state must bear a seal issued by the Department of Health. We have concluded that it must, as discussed below.

Neb.Rev.Stat. §71-4604.01(1) (Supp. 1985) requires that every manufactured home or recreational vehicle manufactured after a certain date which is "sold, offered for sale, or leased in this state shall bear a seal issued by the department." If in compliance with departmental standards, the department shall issue such seal either after inspection of plans and specifications for such manufactured home or recreational vehicle or after actual inspection of the manufactured home or recreational vehicle during or after construction.

Neb.Rev.Stat. §71-4606 (Supp. 1985) requires reciprocity with other states which have and enforce standards "at least equal to" such departmental standards. It then provides that without a seal either from the department or from a state on the reciprocity list, a manufactured home or recreational vehicle manufactured after a certain date "shall not be permitted to be manufactured, offered for sale, sold or leased . . . anywhere within this state nor delivered from this state into any other state or jurisdiction."

Both of the above statutes contain directions to the department and limitations on what maybe done with manufactured homes or recreational vehicles by anyone.

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The directions to the department are that it must issue seals for manufactured homes or recreational vehicles which meet applicable standards. It must identify other states which have and enforce standards at least equal to the department's standards.

The limitations on everyone are that no recreational vehicle may be manufactured, offered for sale, sold or leased 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.

The directions to the department in Neb.Rev.Stat. §§71-1559 and 71-1561 (Supp. 1984) are similar with respect to modular housing units, except that the department shall issue such seals only after ascertaining that the manufacturer is in full compliance with the compliance assurance program through inspections at the plant.

The limitations on what may be done with modular housing units by anyone are similar to those with respect to manufactured homes and recreational vehicles except that Neb.Rev.Stat. §71-1559 provides that modular housing units which are constructed or manufactured by any school district or technical community college may be sold, offered for sale or leased in this state without a seal issued by the department. However, no modular housing units may be transported or delivered into any other state or jurisdiction without such seal or one issued by a state on the reciprocity list. See, Neb.Rev.Stat. §§71-1559, 71-1560 and 71-1561 (Supp. 1984).

Notwithstanding the apparent authority in Neb.Rev.Stat. §71-1559 to the contrary, neither the Nebraska Department of Health nor the agencies issuing seals in states on the reciprocity list have extra-territorial jurisdiction which would permit them to enter another state to make inspections and issue their seal there. See, Parker v. Brown, 317 U.S. 341, 359 (1943) and McDaniel v. McElvy, 91 Fla. 770, 108 So. 820, 831 (1926). As a practical matter, this means that if a manufactured home, recreational vehicle or modular housing unit is manufactured in this state, it must bear a seal from the department before it can be delivered into another state or jurisdiction. This is a case where the free flow of commerce among the several states is assured by uniform standards enforced uniformly by all states. For manufactured homes such uniformity is mandated by federal law which has preempted the regulation of them unless state standards are equivalent. See, 42 U.S.C. §§5401, 5403(d) and (h) (3), 5408, 5422 and 5423.

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In conclusion, a manufactured home, recreational vehicle or modular housing unit manufactured in this state must have a seal issued by the Department of Health before it can be delivered into any other state or jurisdiction.

2. How to determine the number of seals and the number of separate fees required for a modular motel. We have concluded it is one seal per modular motel but the fee is multiplied by the number of living units as discussed below.

In Attorney General Opinion No. 121 (May 21, 1979), we concluded that the usual and well recognized meaning of "dwelling" as used in the definition of a manufactured housing unit was broad enough to include multi-family units, apartments, and hotels. In Attorney General Opinion No. 300 (June 30, 1980), we concluded that only one seal was required for a manufactured housing unit composed of multiple living units unless the living units were manufactured by different manufacturers or at different times.

Since then amendments in Laws 1984, LB 822 changed the name of a "manufactured housing unit" to a "modular housing unit," inserted a definition for a "living unit;" and inserted the provision that a fee "per living unit" shall be charged for each seal issued by the department.

A "living unit" is "any portion of a modular housing unit which contains living facilities including provisions for sleeping, eating, cooking, and sanitation for no more than one family." Neb.Rev.Stat. §71-1557(2) (Supp. 1985). A "dwelling" is still not defined.

In Ledwith v. Bankers Life Ins. Co., 156 Neb. 107, 54 N.W.2d 409 (1952), the argument was made that because of the presence of the conjunction "and," the three verbs "establish, participate in, and administer" in the statute in question imposed three separate and mandatory prerequisites to a valid retirement plan. The court said:

This assumption is over optimistic. The laxity in the use of the conjunctive 'and' and the disjunctive 'or' is so frequent that the doctrine has been accepted that they are interchangeable and that one may give effect to any part of a statute or to effectuate the intention of the Legislature.

Supra at 125.

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The legislative history of Laws 1984, LB 822 includes a purpose of helping the program continue to be self-sustaining, by adding a fee other than the one for each living unit. That fee and the definition of living unit are not mentioned at all.

Based on the above we have concluded that a motel may be a modular housing unit and a living unit includes any portion of such modular housing unit which contains living facilities for no more than one family, whether such unit contains all or only part of the facilities listed in the definition. You still issue only one seal per modular housing unit unless the living units were manufactured by different manufacturers or at different times, but the fee set in your regulations for a seal is multiplied by the number of living units in the modular housing unit.

Sincerely,

ROBERT M. SPIRE
Attorney General



Marilyn B. Hutchinson
Assistant Attorney General

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APPROVED:



Attorney General