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STATE OF NEBRASKA
OFFICIAL
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DEPT. OF JUSTICE

DATE: March 6, 1992

SUBJECT: Compliance With Neb. Rev. Stat. §§ 81-839 to 81-856 by Public Power Districts in Nebraska

REQUESTED BY: Charles G. Nelson, Executive Director
State Board of Examiners for Professional Engineers and Architects

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

You have asked us whether the Nebraska Public Power District and its employees are exempted from the Nebraska statutes governing the practice of professional engineering and architecture, Neb. Rev. Stat. §§ 81-839 to 81-856 (Reissue 1987). Specifically, you ask whether public power districts in Nebraska must comply with the statutes regulating professional engineering when engineering work is performed on the district's own property and equipment.

RELEVANT STATUTES

Section 81-839 requires that any person either practicing or offering to practice the profession of engineering be registered to practice in this state pursuant to §§ 81-839 to 81-856, unless exempted by § 81-853.

Section 81-840(1) broadly defines the "practice of professional engineering" as

> any professional service, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or

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> projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such professional service requires the application of engineering principles and data.

Since § 81-856 indicates that the statutes regulating professional engineering and architecture are necessary for public convenience and welfare and "shall be construed liberally," the above definition would seem to encompass almost any engineering work imaginable, providing that (1) such work involves the public welfare or the safeguarding of life, health, or property, and (2) the work requires application of engineering principles and data. Section 81-840(1) narrowly excepts from the practice of professional engineering "the services ordinarily performed by those commonly designated as . . . power plant engineers . . . who supervise the operation of, or who operate machinery or equipment, or who supervise construction within their own plant."

Section 81-853 provides two more exceptions from the requirements of §§ 81-839 to 81-856 which are relevant to your inquiry. Section 81-853(1)(e) exempts full-time regular employees of commercial firms, associations, or corporations who perform engineering services solely in connection with the products or services of those entities when the employee or entity does not offer professional engineering services to the public. Section 81-853(3)(b) provides that the statutes governing professional engineering and architecture do not "apply to the operation, maintenance, additions, reconstruction, or repair of canals, laterals, ditches, or distribution lines of rural public power districts, public power . . . districts, . . . [or] combined public power and irrigation companies."

Because public power districts are both public corporations and political subdivisions of the State of Nebraska, the exception provided in § 81-853(1)(e) would not apply to public power districts since that exception only mentions commercial firms, associations, or corporations, as opposed to public corporations and political subdivisions. See Neb. Rev. Stat. §§ 70-602 (Reissue 1990) (public power districts are public corporations and political subdivisions of this state) & 70-625 (Reissue 1990) (public power districts have the usual powers of a corporation for public purposes). However, the exception provided in § 81-853(3)(b) would obviously apply to public power districts since such districts are specifically listed in the exception.

CONCLUSION

The above statutes, when considered together, indicate that public power districts in Nebraska must comply with §§ 81-839 to 81-856 when the district's employees apply engineering principles

and data in consulting, investigating, evaluating, planning, designing, supervising construction, or rendering any other professional service in connection with structures, buildings, machines, equipment, processes, works, or projects when public welfare or the safeguarding of life, health, or property is involved. Further, when a public power district engages in the construction of any "public work" for which the contemplated expenditure for the complete project exceeds $40,000 and which involves professional engineering, as described above, the district must have a registered professional engineer prepare the plans, specifications, and estimates and observe the construction. § 81-855 (political subdivisions of the state must comply with this requirement). "Public work" may be defined as a work, "whether of construction or adaption, undertaken and carried out by the national, state, or municipal authorities, and designed to subserve some purpose of public necessity, use, or convenience." Black's Law Dictionary 1440 (5th ed. 1979).

There are two exceptions to these general rules. The public power district need not comply with §§ 81-839 to 81-856 when the services at issue: (1) are those ordinarily performed by power plant engineers who supervise the operation of, or who operate machinery or equipment, or who supervise construction within their own plant, and (2) involve additions to or the operation, maintenance, reconstruction, or repair of canals, laterals, ditches, or distribution lines of public power districts.

We recognize that our interpretation of the relevant statutes has resulted in a very general rule which may be difficult to apply in practice; however, a lack of helpful legislative history and case law involving these statutes prevents us from formulating a more specific answer.

Sincerely,

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Approved By:

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