

**Opinion No. 88-28**

May 3, 1988

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott Spencer, Assistant Attorney General

**TO:** The Honorable Richard T. Knowles, State Representative, Chaves County, P. O. Box 285, Roswell, New Mexico 88201

**QUESTIONS**

Whether a contractor's license is required for the installation of turbine water well pumps for municipalities and other public entities?

**CONCLUSIONS**

No.

**ANALYSIS**

Section 60-13-3 of the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978, defines a "contractor" as:

A. ... any person who undertakes, offers to undertake or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes but is not limited to constructing, altering, repairing, installing or demolishing any:

....

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

....

(10) water, oil or other storage tank;

....

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

C. [Contractor] does not include:

....

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water....

(Emphasis added). Section 60-13-12(A) requires that any person engaged in the business of "contractor" in the state first obtain a license from the Construction Industries Division.<sup>1</sup>

"Well pumps" are:

Specifically designed pumps, of small diameter to fit inside well casings, [and] are used in all well installations, except in flowing artesian wells or where the water level in the well is high enough for direct suction lift by a pump on the surface (about 15 ft). Well pumps are set some distance below the water level, so that they are submerged even after the drawdown is established. Well pump settings of 100 ft are common, and they may exceed 300 ft where the ground-water level is low. Multiple-stage centrifugal pumps are used most generally. They are driven by motors at the surface through vertical shafts, or by water proof motors attached directly below the pumps.

14 McGraw-Hill Encyclopedia of Science and Technology, at 405 (1960) (hereinafter "McGraw-Hill") (Emphasis added). A "deep-well pump" or "vertical turbine" is:

another widely used type of multistage pump.... The details of design and the choice of impeller of relatively high specific speed are the result of drastic limitation of the outside diameter required to fit inside drilled well casings. Pumps of this type are built with as many as 20 or 30 stages for high lifts from relatively small-diameter wells.

2 McGraw-Hill at 633. A "pump station," on the other hand, is a structure built above the ground that pumps water from one station to another. *Treat v. Nowell*, 37 Ariz. 290, 292, 294 P. 273, 274 (1930); *First State & Savings Bank v. Oliver*, 101 Or. 42, 51, 198 P. 920, 922 (1921).

We find that the installation of a well pump is necessary to complete and use a well. Paragraph 60-13-3(C)(2) explicitly excludes persons who complete water wells from the definition of contractor. Therefore, we conclude that Paragraph 60-13-3(C)(2), excludes from the definition of contractor one who installs a well pump.

However, Paragraph 60-13-3(C)(2) also contains an exception to the exceptions to the definition of contractor: "[any person who] services equipment and structures used in the production of any product incident to the production of any petroleum, gas or water well, excluding any person performing duties normally performed by electrical, mechanical or general contractors." (Emphasis added.) We therefore must determine

whether the emphasized phrase applies only to persons servicing equipment and structures used in the production of any product incident to the production of a well, or to any other portion or all of the Paragraph 60-13-3(C)(2), including those persons who complete a well.

The fundamental rule in construing statutes is to ascertain and give effect to the legislature's intent. *State v. Chavez*, 77 N.M. 79, 82, 419 P.2d 456, 457 (1966). Section 60-13-3 defines "contractor" as used in the Construction Industries Licensing Act; and Subsection 60-13-3(C) provides certain statutory exceptions to the term. The legislature provided for certain exceptions from the term "contractor." If we interpreted the language emphasized above to apply to all of Paragraph 60-13-3(C)(2), then the exception within the exception would render the entire subsection superfluous. To give meaning to all of the words in Paragraph 60-13-3(C)(2), the emphasized language must modify only the second clause and not the first clause nor the entire subsection.

We reach the same result when we grammatically analyze Paragraph 60-13-3(C)(2). It is composed of three clauses separated by semicolons. "The semicolon is used to separate consecutive phrases or clauses which are independent of each other grammatically, but depend alike upon some word preceding or following." *Orlosky v. Haskell*, 304 Pa. 57, 62, 155 A. 112, 114 (1931). See also C. Ward, *Sentence and Theme* at 331 (1923) ("A semicolon is used to show that what follows is grammatically independent, though closely related in thought.") Therefore, since each clause is grammatically independent of the other, the exclusion in the second clause does not apply to either of the other clauses in Paragraph 60-13-3(C)(2).

Furthermore, the legislature added the second clause of Section 60-13-3(C)(2) as an amendment in 1986. 1986 N.M. Laws ch. 107, § 1. Under these circumstances, we are hardpressed to interpret an exception contained in one clause as modifying the entire paragraph. Finally the exception is located at the end of the second clause and not at the end of the paragraph.

Since the exception in the second clause of Paragraph 60-13-3(C)(2) does not apply to the first clause, it is our opinion that a person who installs a turbine water well pump need not obtain a contractor's license.<sup>2</sup>

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General

## **GENERAL FOOTNOTES**

[n1](#) In answering this question, we assume the municipality or other public entity is not installing the pumps. An agency or political subdivision of the state by definition is not a contractor and is not required to hold a contractor's license for work performed. *Att'y. Gen. Op. 66-48* (1966). Rather, we assume a private contractor will contract with the municipality or other public entity to install them. The fact that the work is to be

performed for a municipality or public entity is not relevant to our determination of whether a contractor's license is required. No statutes exempt contractors who perform work under contract with these entities from the Act's licensing requirements.

[n2](#) We note that a previous Attorney General Opinion reached the same conclusion under prior law. Att'y. Gen. Op. 57-154 (1957). The opinion relied on Section 67-16-3 NMSA 1953, which defined a contractor as a person "who for a fixed sum ... undertakes or offers to undertake, or purports to have the capacity to undertake to construct, alter, repair or add to or improve any building, excavation, or other structure, project, development or improvement, or any part thereof" (emphasis added). It then reasoned: "The installation of turbine water well pumps is an improvement to the water well, not to a 'structure' ---- nor to an 'excavation' under the Statute and previous Opinion on the Statute. As such we do not think it comes under the purview of the Contractor's Licensing Board." In 1967, the legislature repealed Section 67-16-3 NMSA 1953. 1967 N.M. Laws, ch. 199, § 65. The legislature enacted the progenitor of the current Section 60-13-3 NMSA 1978 in 1978. 1978 N.M. Laws, ch. 66, § 1.