



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 5, 1989

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 89- 84

The Honorable Leroy A. Hayden
State Senator, Thirty-Ninth District
Box 458
Satanta, Kansas 67870

Re: Waters and Watercourses -- Groundwater Exploration
and Protection -- Administration and Enforcement of
Act; Licensee

Synopsis: Installation, maintenance and design of water well
pumps is not "construction of water wells" within
the meaning of the Kansas groundwater exploration
and protection act. Therefore, a water well
contractor's license is not required to install,
maintain or design a water well pump.

Additional legislation is required for the
department of health and environment to impose
continuing education on licensed water well
contractors. Cited herein: K.S.A. 82a-1203, as
amended by 1989 Senate Bill No. 121; 82a-1206;
K.S.A. 1988 Supp. 82a-1214; K.A.R. 1987 Supp.
28-30-2; 1988 House Bill No. 2828; 1986 House Bill
No. 2652.

* * *

Dear Senator Hayden:

As State Senator for the Thirty-Ninth District, you have
requested our opinion regarding the Kansas groundwater
exploration and protection act, K.S.A. 82a-1201, et seq.
Specifically, you ask whether the Kansas department of health

and environment (KDHE) is authorized by the act to require licensure of individuals who install, maintain and design water well pumping systems. Also, you ask whether the department has authority to require continuing education for those individuals licensed under the act.

Pursuant to K.S.A. 82a-1206(a), water well contractors are required to be licensed by KDHE. Engaging in the business of constructing, reconstructing, or treating water wells without being licensed as required by the act is made unlawful by K.S.A. 1988 Supp. 82a-1214.

A contractor is:

"any person who constructs, reconstructs or treats a water well. The term shall not include: (1) an individual while in the act of constructing a water well on land which is owned by such individual and is used by such individual for domestic purposes at such individual's place of abode, but only when the well is constructed in compliance with prescribed minimum well standards as provided in this act; or (2) an individual who performs labor or services for a licensed water well contractor at such contractor's direction and under such contractor's supervision." K.S.A. 82a-1203(g), as amended by 1989 Senate Bill No. 121.

The phrase "construction of water wells" is defined as "all acts necessary to obtaining groundwater by any method for any use including, without limitation, the location of and excavation for the well." K.S.A. 82a-1203(a), as amended. While the act does not define the word "treat", KDHE has, by regulation, defined "treatment" as

"the stimulation of production of groundwater from a water well, through the use of hydrochloric acid, muriatic acid, sulfamic acid, calcium or sodium hypochlorite, polyphosphates or other chemicals and mechanical means, for the purpose of reducing or removing iron and manganese hydroxide and oxide deposits, calcium and magnesium carbonate deposits and slime deposits associated with iron or

manganese bacterial growths which inhibit the movement of groundwater into the well." K.A.R. 1987 Supp. 28-30-2(q).

We do not believe that pump installation, maintenance or design is the construction, reconstruction or treatment of a water well within the meaning of the statutes as they now exist. While the phrase "construction of water wells" appears broad, it is not the intent of the legislature that those who install, maintain or design the pumps be licensed under this act. Such a requirement has twice been rejected by the legislature. See 1988 House Bill No. 282 and 1986 House Bill No. 2652.

Your second question is also answered by proposed legislation which has failed. Continuing education requirements were rejected by the legislature when 1988 House Bill No. 2828 died in the House Committee on Energy and Natural Resources. In the absence of further legislation, KDHE is not authorized to impose continuing education requirements on licensed water well contractors.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:bas