

TEXAS DEPARTMENT OF LICENSING AND REGULATION



Legal Services/General Counsel's Office

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FILE # ML-41500-00

OPINION COMMITTEE

I.D. # 41500

Via Interagency Mail

The Honorable John Cornyn
Texas Attorney General
ATTN: **Opinions Committee**
P.O. Box 12548
Austin, TX 78711-2548

RQ-0252-JC

Re: Does Sec. 6(f), in conjunction with Sec. 10 of Article 8861, exempt manufactured housing manufacturers, retailers, rebuilders, or installers from the registration requirements of Sec. 10?

Dear General Cornyn:

Effective January 1, 1998, the 75th Legislature (HB 2025) added section 10 to article 8861 (Air Conditioning and Refrigeration Contractor License Law).¹ Section 10 requires certain persons to be registered with the Texas Department of Licensing and Regulation (TDLR) in order to purchase refrigerants or equipment containing a refrigerant.

At that time, persons who held a certificate of registration under section 10, or were licensed air conditioning contractors could purchase refrigeration products (section 10 (e)(1-2)). Additionally, subsection (g) of section 10 authorized the purchase of refrigerants if the use was exempted under section 6(a)(1) of the Act. Prior to June 19, 1999, section 6(a) of the Act read: "*This Act does not apply to a person who...*," and then enumerated classes of persons in 1-7.²

In October of 1997, we asked the Texas Attorney General if the department could exempt by rule, persons from the registration requirement under section 10, who were exempted under article 8861. The answer was that the TDLR *does not have authority* to permit

¹ TEX.REV.CIV.STAT.ANN. art. 8861 (Vernon 1999).

² (1) homeowners (2) maintenance workers (3) employees of regulated electric or gas utility (4) licensed professional engineers (5) employees of an industrial operation (6) persons working on: portable and ductless units with capacity of 3 tons or less, portable heating units, temporary units, residential refrigerators, freezers, and ice machines (7) motor vehicle air conditioner mechanics

persons exempt from licensing requirements under sections 6(a)(3), (5), (6), and (7) to purchase refrigerant products.³

I have a similar inquiry with respect to manufactured home manufacturers, retailers, rebuilders, or installers.

Section 6(f) of article 8861 reads:

This article does not apply to a person or firm that is licensed as a manufacturer, retailer, rebuilder, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act, (Article 5221f, Vernon's Texas Civil Statutes) and that engages exclusively in air conditioning and refrigeration contracting for manufactured homes provided that the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this Act. (emphasis added here)

My question is: Does Sec. 6(f), in conjunction with Sec. 10 of Article 8861, exempt manufactured housing manufacturers, retailers, rebuilders, or installers from the registration requirements of Sec. 10, Article 8861? More specifically, does the language in subsection 6(f), "this article does not apply..." contemplate the entire article including section 10, or does the subsequent legislation that enumerates who is exempt from section 10 preempt the general language in subsection 6(f)?

Our initial analysis followed Letter Opinion No. 98-010, in that section 10 is the controlling section over exemptions to the refrigerant registration requirements, and section 6 exemptions apply solely to air conditioning and refrigeration contracting license requirements.⁴ We also noted the import of section 3B, which has not been amended, that states unless a person is exempted under section 6, a person *may not perform* air conditioning and refrigeration *contracting without a license*. Section 3B appears to indicate that the section 6 exemption is applicable only to the contracting licensing requirement and not to the refrigerant purchase registration requirement. However, subsequent amendments to sections 6 and 10 of article 8861 complicate our analysis.

Effective June 19, 1999, HB 1064 (passed May 24, 1999) of the 76th Legislative Session amended Article 8861, section 6(a) in the following manner: *Except as provided by Section 10 of this Act, this Act does not apply to a person who...* (underline indicates new language)

³ Letter Opinion 98-010 was withdrawn for reconsideration on June 10, 1998 at Senator Truan's request. House Bill 1822 of the 76th Legislature mooted the department's initial inquiry and Senator Truan's subsequent questions. On or about August 5, 1999, your office closed its file Letter Opinion No. 98-010 (1998).

⁴ "... those persons not specifically authorized to purchase refrigerants are forbidden to do so." L.O. 98-010, page 2.

HB 1064 also amended section 10 (g) to read: *A purchaser may purchase refrigerants if that person's use is exempt under Section 6(a)(1), (3), (5), (6), or (7) of this Act...*

In HB 1822 (passed May 19, 1999), the 76th Legislature amended Section 10 by adding subsection (j): *This section does not apply to persons exempt under Section 6(a)(3), (5), or (7) of this Act.*

The 76th Legislature did not amend section 6(f) (the licensing exemption for manufactured housing manufacturers, retailers, rebuilders, or installers),⁵ nor added manufactured housing entities to the list of persons exempt from the section 10 registration requirements.

With respect to a manufactured housing entity exemption, it appears that sections 6(f) and 10 are irreconcilable. Section 10 enumerates who may purchase refrigerant products without registering, and does not specify manufactured home manufacturers, retailers, rebuilders, or installers in that group. Section 6(f) specifically states manufactured home manufacturers, retailers, rebuilders, or installers are exempt from the entire article.

The Legislature had the opportunity to exempt manufactured home manufacturers, retailers, rebuilders, or installers from the registration requirement when it exempted three additional categories of purchasers, and did not. The 76th Legislature in two amendments, added additional categories of persons exempt from registration requirements in section 10, but did not specify an exemption for manufactured housing entities. However, a second negative inference can be gleaned from the Legislatures' action of amending section 6(a)1-7 (adding the words, "except as provided by section 10" to modify "this act does not apply..."), but not changing section 6(f) (leaving the words "this article does not apply.").

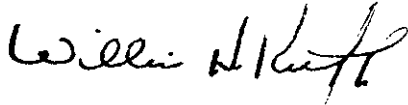
Our analysis brought is to conclude that the competing exemptions in section 6 & 10, with respect to manufactured housing entities, cannot be reconciled or harmonized. Because the irreconcilable sections in article 8861 occurred in one amendment (HB 1064), section 311.025 (Irreconcilable Statutes and Amendments) of the Government Code is not instructive.

The Texas Manufactured Housing Association and the Texas Air Conditioning Contractors Association, on behalf of their respective members have an interest in your opinion, and may wish to brief your Honor.

⁵ The 75th Legislature (HB 2703) amended section 6(f) in the following manner: (f) This article does not apply to a person or firm that is licensed ~~registered~~ as a manufacturer, retailer, rebuilder, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages exclusively in air conditioning and refrigeration contracting for manufactured homes provided that the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this Act ~~in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge~~.

Your service in answering my question is appreciated. If you have any questions regarding this request, please contact me at 512/463-3170, or bill.kuntz@license.state.tx.us, or the agency's General Counsel, Theda Lambert at 512/463-3306 or theda.lambert@license.state.tx.us.

Sincerely,



William H. Kuntz, Jr.
Commissioner/Executive Director

TL:cj

c: The Honorable Carlos Truan

The Honorable John J. Carona

The Honorable Joseph C. Pickett

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attach: February 19, 1998 Letter Opinion No. 98-010
June 10, 1998 letter from Opinion Committee to Senator Truan
July 5, 1999 letter from Opinion Committee to Senator Truan
Article 8861 effective 9/1/99
Article 8861 effective 9/1/97
Article 8861 effective 9/1/95