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OPINION COMMITTEE

June 17, 2004

The Honorable Greg Abbott  
Attorney General  
P.O. Box 12548  
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FILE # ML-43767-DY

I.D. # 43767

RQ-0233-GA

Dear General Abbott,

I hereby request an opinion concerning provisions in House Bill 1487, as adopted by the 78<sup>th</sup> Legislature during regular session. House Bill 1487 established the Texas Electrical Safety and Licensing Act (the Act), Occupations Code, Chapter 1305, and created a program for the statewide licensure of electricians, to be administered by the Texas Department of Licensing and Regulation (TDLR or the Department). Chapter 1305 requires a person to obtain an appropriate license from TDLR to perform electrical work, unless the work is covered by an exemption. Tex. Occup. Code Ann. §1305.151 (Vernon 2004). The license is required beginning on September 1, 2004. In addition, Section 3 of House Bill 1487 allows for certain qualifying individuals to obtain a license without taking an examination. Tex. H.B. 1487, 78<sup>th</sup> Leg., R.S. (2003). This "grandfather" period ended on June 1, 2004, and individuals who did not apply by that time must prove that they have passed the appropriate examination, or qualify for licensure through reciprocity.

This request concerns language in the exemptions section of the Act that is ambiguous.

Question: Does the exemption established in Texas Occupations Code §1305.003(14) include all persons performing electrical work for a private industrial business, even if a person is not an employee of the private industrial business?

**Private Industrial Business Exemption**

The Act exempts certain electrical work from the requirements of Chapter 1305. At §1305.003(14) the following language is found,

"[This chapter does not apply to] a person who is employed by and performs electrical work solely for a private industrial business, including a business that operates a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation;"

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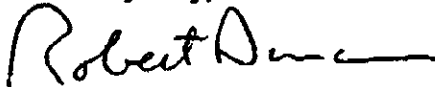
Based on input from the Electrical Safety and Licensing Advisory Board and industry representatives and the public at focus group meetings conducted by the TDLR concerning implementation of the Act, the Department took the position that the exemption covers employees of the private industrial business, and does not exempt third party contractors with contracts for performing electrical work for the private industrial business.

There is concern that §1305.003(14), and in particular, the phrase "employed by," is ambiguous. The term is not defined in Chapter 1305 or Department rules. Certainly one possible interpretation of this language is that it refers to an employee of the private industrial business. However, the subject language is often utilized to indicate that a service, individual or product is "used by" someone. This is consistent with the Black's Law Dictionary definition of "employ," which states "To make use of, to keep at work, to entrust with some duty." BLACK'S LAW DICTIONARY 525 (6<sup>th</sup> ed. 1990). As such, one could interpret §1305.003(14) as applying to third party contractors who are used by a private industrial business to perform electrical work.

Words and phrases should be read in context and construed according to the rules of grammar and common usage. §311.011 Tex. Gov't Code Ann. (Vernon 1998). In this case, §1305.003(14) is one of 17 statutory exemptions, 16 of which speak to a type of "work" or "installation" that is exempt from the Act. For example, §1305.003(2) exempts "the installation of electrical equipment underground in a mine and in self-propelled mobile surface mining machinery and its attendant electrical trailing cable." Clearly, §1305.003(14) applies to "persons," not work or installation. However, this section should be read and interpreted in the context of the Act, and as such, could exempt all electrical work performed for private industrial businesses, not just that performed by an employee of the private industrial business. Businesses in Texas vary in their business practices; increasingly, industries outsource electrical and other specialized work, while some continue to have employees perform such specialized functions.

I appreciate your prompt attention to this matter. Please don't hesitate to contact me directly if I can be of assistance.

Yours very truly,



Robert Duncan  
Texas State Senate  
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