

N.D.A.G. Letter to Lindell (June 18, 1992)

June 18, 1992

William F. Lindell
P.O. Box 427
Washburn, ND 58577-0427

Dear Mr. Lindell:

Thank you for your April 22, 1992, letter in which you request an opinion concerning whether persons employed by the U.S. Geological Survey and agencies of the state of North Dakota are required to post a bond under N.D.C.C. ch. 43-35. In order to answer your question, it is necessary to examine the statutes and rules that define when a bond is required.

N.D.C.C. § 43-35-14 provides:

Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of two thousand dollars conditioned for the faithful performance of all water well, monitoring well, or pump and pitless unit installation contracts undertaken by the applicant and the strict compliance with this chapter. (Emphasis supplied.)

N.D.C.C. § 43-35-11 provides:

No person, partnership, firm, or corporation shall engage in the business of water well contracting or water well pump and pitless unit installation unless certified to do so by the board of water well contractors. (Emphasis supplied.)

N.D.C.C. § 43-35-02(2) defines a "water well contractor" as "any person who is certified to conduct the business of well drilling under the provisions of this chapter [N.D.C.C. ch. 43-35]." (Emphasis supplied.) N.D.C.C. § 43-35-02(5) defines "well" as "any artificial opening or artificially altered natural opening, however made, by which groundwater is sought, including test holes drilled for the purpose of exploration for and development of ground water . . ." The definition of "wells" in N.D. Admin. Code § 90-01-02-01 is broader, and includes wellsmade for the purpose of "monitoring the level, quantity, and quality" of ground water.

In 1987, the legislature amended N.D.C.C. ch. 43-35 to require certification of "monitoring well contractors" as well as "water well contractors." See 1987 N.D. Sess. Laws ch. 534 and N.D.C.C. §§ 43-35-12, 13, 14, 15.2, 18.2, 19.2, 21, and 22.

N.D.C.C. ch. 43-35 does not define "monitoring well contractor." The bond of \$2,000, which must be renewed annually, is required of both monitoring well contractors and water well contractors. N.D.C.C. §§ 43-35-13, 14, 17, and 21.

N.D. Admin. Code § 90-02-03-03 provides that no driller shall engage in "water well drilling" unless a certified water well contractor is actually in charge of operations. N.D. Admin. Code Title 90 does not extend this requirement to "monitoring well" drilling.

In summary, N.D.C.C. ch. 43-35 requires that all water well "contractors" in the business of well drilling have both a certificate and bond before conducting any drilling. Monitoring well "contractors" are also required to have both a certificate and bond, although the term "monitoring well contractor" is not defined in either N.D.C.C. ch. 43-35 or N.D. Admin. Code Title 90. Likewise, the term "contractor" and the phrase "in the business of" are not defined in either N.D.C.C. ch. 43-35 or N.D. Admin. Code title 90.

Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. A statute must be construed in the way that an ordinary person reading it would understand it and the language should be given its usual, accepted meaning. Schafer v. Workers Compensation Bureau, 462 N.W.2d 179 (N.D. 1990). The legislative intent in enacting a statute must first be sought from the language of the statute itself. Hayden v. Workers Compensation Bureau, 447 N.W.2d 489 (N.D. 1989).

The word "contractor" ordinarily means someone who furnishes materials or performs services at a specified price, especially for construction. American Heritage Dictionary, 318 (2d Coll. Ed. 1985); Black's Law Dictionary, 295 (5th Ed. 1979). The word "business" in this context ordinarily means an occupation, profession, or commercial activity engaged in for gain or profit. American Heritage Dictionary, 220 (2d Coll. Ed. 1985); Black's Law Dictionary, 179 (5th Ed. 1979). Applying the above rules of construction to the above statutes, employees of the U.S. Geological Survey and agencies of the state are not ordinarily understood to be "contractors" "in the business" of drilling wells for gain.

It is my opinion that whether persons employed by the U.S. Geological Survey and agencies of the state of North Dakota are required to post bond is a factual question that must be determined on a case by case basis by the state board of water well contractors. If the persons in question are "contractors" "in the business" of drilling either monitoring wells or water wells, then they are required to obtain a certificate and file a surety bond. If, on the other hand, the board determines that the U.S. Geological Survey and agencies of the state are not "contractors" "in the business" of drilling wells, then a certificate and bond are not necessary.

With regard to employees of state agencies, it is unlikely that they are in the business of water well contracting. In most cases they are performing their duties as regulators carrying out statutory responsibilities. There may be circumstances when state agencies act as contractors rather than as regulatory bodies, but it is likely that in most cases they are not "contractors," and therefore are not subject to N.D.C.C. ch. 43-35.

However, any public employee who desires or is directed to become certified under the provisions of N.D.C.C. ch. 45-35 must execute and deposit a surety bond with the board. The statute makes no exceptions and does not give discretion to the board to alter or waive its requirements.

I trust this answers your questions.

Sincerely,

Nicholas J. Spaeth

lw/ah