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Robert R. Corbin

June 30, 1987

Ms. Betty B. Wyckoff
Executive Director
Structural Pest Control Board
2207 South 48th Street, Suite M
Tempe, Arizona 85282

Re: I87-091 (R87-046)

Dear Ms. Wyckoff:

You have requested an opinion whether persons who apply pesticides in and around facilities owned by the state and political subdivisions of the state must be licensed by the Structural Pest Control Board ("Board").

You have specifically asked whether school districts may utilize persons who are not licensed by the Board to apply pesticides in and around schools.

A person who engages in the business of structural pest control must first be licensed by the Structural Pest Control Board. A.R.S. § 32-2325. The "[b]usiness of structural pest control" is defined as:

engaging in, offering to engage in,
advertising for, soliciting or performing any
of the following:

(a) Identifying infestations or
infections or making inspections for the
purpose of identifying or attempting to
identify infestations or infections of
households or other structures and the
surrounding area by any of the following:

(i) Household pests.

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(ii) Wood-destroying pests or organisms.

(iii) Pests, including weeds, which exist in the area near or around structures, ornamental shrubs and trees, on golf courses or in lawns and cemeteries.

(b) Making written or oral inspection reports, recommendations, estimates or bids, with respect to infestations or infections.

(c) The application of or the making of contracts or submitting of bids for the application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations or infections.

A.R.S. § 32-2301(5). Therefore, the spraying of pesticides in and around schools and facilities owned by the state and its political subdivisions requires a license unless specifically exempted.

The exceptions to Board licensure are set forth in A.R.S. § 32-2311 as follows:

1. Persons licensed or certified pursuant to title 3, chapter 2, article 6.

2. Persons applying pesticides on property which they own, lease or rent unless the property is a commercial or institutional food handling establishment or a golf course.
. . . .

3. Authorized representatives of any educational institution or state agency engaged in research or the study of pest control.

4. Landscape contractors licensed pursuant to chapter 10 of this title whose application of nonrestricted use pesticides is only in connection with turf and ornamental horticulture pest control and weed control and is incidental to their landscape contracting work.

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It is a rule of statutory construction that when a statute enumerates the subjects it applies to, it must be construed to exclude all subjects not mentioned. See Inspiration Consolidated Copper v. Industrial Commission, 118 Ariz. 10, 12, 574 P.2d 478, 480 (App. 1977). One might ask whether the state, a school district or other political subdivision of the state might be a "person" for purposes of the exemption in subsection (2) of A.R.S. § 32-2311. "Person" is not defined in the definitions section of this chapter, A.R.S. § 32-2301. A.R.S. § 1-215(24) provides:

"Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

This statute specifically provides that "person" includes the state and political subdivisions only when their property is the subject of a criminal or public offense. Otherwise the term does not include the state and political subdivisions, including school districts. It follows that the Legislature did not intend for the exemption set out in A.R.S. § 32-2311(2) to apply to the state and political subdivisions and that it intended schools to be covered by the provisions of the Structural Pest Control Act if not otherwise engaged in pest control educational research as exempted by A.R.S. § 32-2311(3).

We find further support for this conclusion because prior to 1985, A.R.S. § 32-2311 exempted "governmental agencies, state, federal, city or county officials and their employees" from the provisions of the Structural Pest Control Act. Laws 1965 (1st Reg. Sess.) Ch. 97, § 1. However, in 1984 the legislature repealed this statute containing this exemption and replaced it with a statute that did not contain this exemption. See Laws 1984 (2nd Reg. Sess.) Ch. 312, §§ 3 and 4.

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By amending a statute, the legislature is presumed to have changed existing law. Finch v. State Department of Public Welfare, 80 Ariz. 226, 229, 295 P.2d 846, 848 (1956). The amendment of A.R.S. § 32-2311 indicates that the legislature intended to exclude government officers and agencies from the exceptions to the Board's licensing requirements. The necessary conclusion is that the legislature intended government officials and agencies to comply with the licensing requirements of A.R.S. §§ 32-2312 and 32-2313.

We conclude that school districts, as well as state, city and county agencies, their officials and employees are not exempted from the Structural Pest Control Act's requirements and must be licensed or certified or must employ licensed or certified structural applicators for the application of pesticides in or around properties owned by the state and its political subdivisions, including school districts.

Sincerely,



BOB CORBIN
Attorney General

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