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November 20, 2017

ATTORNEY GENERAL OPINION NO. 2017- 17

Tamara Niles
City Attorney, City of Arkansas City
125 W. 5th Ave.
Arkansas City, KS 67005

Re: Unfair Trade and Consumer Protection—Consumer Protection; Kansas Roofing Registration Act—Kansas Roofing Registration Act; Exemptions; Violations; Complaints; Investigations; Subpoenas

Synopsis: Property owners may perform roofing services on property owned by them. Employees of the owners of residential and farm properties may perform roofing services on those properties; the law is ambiguous as to whether employees of the owners of commercial property may perform roofing services on those properties. Contractors and other non-employee agents of property owners must register under the Kansas Roofing Registration Act prior to performing roofing services on the owners' properties. The Office of the Attorney General is the state agency responsible for administering the Kansas Roofing Registration Act. Cited herein: K.S.A. 2017 Supp. 50-6,122; 50-6,123; 50-6,129; 50-6,133.

* * *

Dear Ms. Niles:

As City Attorney for the City of Arkansas City (City), you ask our opinion on several matters related to the Kansas Roofing Registration Act (KRRA). Specifically, you ask: (1) whether landlords may roof residential and/or commercial property owned by them without being registered under the KRRA; and (2) which entity has the legal responsibility to enforce the KRRA.

In your request for an opinion, you explained that the City Code Enforcement Division was contacted by several landlords requesting permits to install roofs on property they owned. You explained that the City originally required the landlords to be registered under the Act, but that further analysis has revealed the relevant state statutes to be ambiguous.[1] We will address each of your questions in turn.

The KRRA prohibits any person from engaging in the business of or acting in the capacity of a roofing contractor within the state without having a valid registration certificate.[2] The threshold inquiry thus becomes whether a landlord who roofs residential or commercial property owned by him or her is acting in the capacity of a roofing contractor. Based on the structure of the statute, we examine three distinct scenarios that illuminate the answer to that question.

1. May a landlord personally perform roofing services on his or her own property without registering under the KRRA?

Yes. The relevant definition of a "roofing contractor" within the KRRA is "any person, including a subcontractor and nonresident contractor, who in the ordinary course of business[e]ngages in the business of commercial or residential roofing services for a fee."[3] Although not separately defined, we believe "for a fee" means "in exchange for payment,"[4] which would include fixed fees, hourly wages, and salary directly attributable to engaging in the business of commercial or residential roofing services.

A landlord who personally performs roofing services on property he or she owns is presumably not doing so "for a fee" and, absent other facts, is therefore not acting in the capacity of a "roofing contractor" that would require registration under the KRRA.

2. May a landlord cause employees of the landlord to perform roofing services on the landlord's property without registering under the KRRA?

It depends on the type of property. A landlord's employees providing roofing services on the landlord's property are presumably being paid to provide roofing services and would thus fall within the definition of a "roofing contractor."[5] However, they may nonetheless be exempt under the following provision:

> The roofing contractor registration act shall not apply to:

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[1] Correspondence, Tamara Niles, July 18, 2017.
[2] K.S.A. 2017 Supp. 50-6,123(a)(1).
[3] K.S.A. 2017 Supp. 50-6,122(a)(1)(A).
[4] Black's Law Dictionary (10th ed. 2014) (defining "fee" as "a charge or payment for labor or services").
[5] We assume, without deciding, that any roofing services provided by the employees would be provided "in the ordinary course of business." This would, of course, be a fact-specific determination.

> An actual owner of commercial, residential or farm property who physically performs, or has employees who perform, roofing services including, construction, installation, renovation, repair, maintenance, alteration, waterproofing or removal of materials or structures on such owner's own dwelling or another structure located on the residential or farm property owned by such person without the assistance of any registered roofing contractor.[6]

Under this exemption, a landlord's employee who performs roofing services on the landlord's residential property does not need to register under the KRRA. Similarly, a landlord's employee who performs roofing services on the landlord's farm property is exempt from registration. It is, however, unclear whether a landlord's employee who performs roofing services on the landlord's commercial property is exempt from registration under the KRRA because the statute is ambiguous; by its plain text, the exemption applies to an "actual owner of commercial . . . property" but only "on the residential or farm property owned by such person."

A review of the legislative history of 2013 House Bill 2024 reveals the Senate Committee on Commerce inserted the word "commercial" before the phrase "residential or farm property" but only in the first instance. Although the Supplemental Note to the amended substitute bill suggests the Senate Committee believed this amendment would exempt commercial property owners from the Act,[7] the Supplemental Note contains a disclaimer that it was "prepared by the Legislative Research Department and [does] not express legislative intent." The only reflection of legislative intent comes from the March 20, 2013 minutes of the Senate Committee, in which it appears the Committee members were concerned about exempting a "handyman" performing a "small repair" from the provisions of the Act. This amendment does not appear to serve those aims.[8]

Courts generally do not add words to statutes when trying to interpret them, and only do so when the intent of the Legislature can be discerned and adding those words would be necessary to effect the Legislature's intent.[9] Although we believe the Legislature may have intended to exempt from the Act owners of commercial property who perform roofing services on their own commercial property, or cause their employees to provide roofing services on their commercial property, the present ambiguity in the statute is too great and the legislative history is insufficiently clear for us to offer a confident opinion

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[6] K.S.A. 2017 Supp. 50-6,129(a)(1).

[7] Supplemental Note on Sub. for 2013 H.B. 2024, As Recommended by Senate Committee on Commerce.

[8] Instead, the Senate Committee included the provision now codified at K.S.A. 2017 Supp. 50-6,129(a)(8) (including a $2,000 ceiling for small repair services by persons who do not advertise themselves as roofing contractors).

[9] *E.g.*, *Shrader v. Kan. Dept. of Revenue*, 296 Kan. 3, 9-10 (2012) (reciting many oft-used rules of statutory interpretation).

on the matter. We believe this ambiguity can only be addressed by the Legislature in a subsequent statutory amendment.[10]

3. May a landlord cause contractors, agents, or other non-employees to perform roofing services on the landlord's property without registering under the KRRA?

No. The "employee" exemption in K.S.A. 2017 Supp. 50-6,129(a)(1) applies only to employees—not to other persons doing work for a landlord. A landlord's non-employee agents and contractors must be registered under the KRRA even when working for a landlord on the landlord's own properties.

You also ask which entity has the legal responsibility to enforce the KRRA. K.S.A. 2017 Supp. 50-6,133 provides that the Attorney General has authority to enforce the KRRA and specifically contemplates a process by which complaints are to be filed with the Attorney General. Thus, the Attorney General has the legal responsibility to enforce the KRRA.

However, we note that certain local officials have non-discretionary legal duties under the provisions of the KRRA. For example, local officials who issue permits "for roofing services or jobs" are required to "enter a roofing contractor's registration certificate number on the permit."[11] The KRRA also imposes a duty on a landlord, even one "exempt from the registration requirements of this act," who applies for permits for roofing projects, even on his or her own property, to supply local permitting officials the registration certificate number of "each roofing subcontractor engaged in roofing services and doing work covered by the permit, if any."[12] In such an instance, the local permitting official is under a statutory duty to "enter each roofing contractor registration number so supplied before inspection of the job."[13] Thus, although the Attorney General has the legal responsibility to enforce the KRRA, local officials have legal duties such as those described above that tend to ensure compliance with the KRRA.

<u>Summary</u>

Without being required to register under the KRRA, a property owner (landlord) may: personally and physically perform roofing services on property he or she owns; and cause employees to perform roofing services on residential or farm properties he or she owns. The ambiguity in K.S.A. 2017 Supp. 50-6,129(a)(1) makes it unclear whether a property owner may cause employees to perform roofing services on commercial properties he or she owns without complying with the KRRA registration requirements.

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[10] "No matter what the legislature may have really intended to do, if it did not in fact do it, under any reasonable interpretation of the language used, the defect is one that the legislature alone can correct." *State v. Prine*, 297 Kan. 460, 475 (2013).
[11] K.S.A. 2017 Supp. 50-6,135(a).
[12] K.S.A. 2017 Supp. 50-6,135(b).
[13] *Id.*

Non-employee agents and other contractors of a property owner must register under the KRRA when performing roofing services for a fee.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Craig Paschang

Craig Paschang
Assistant Attorney General

DS:AA:CP:sb