

**OPINION
60-291**

April 1, 1960(OPINION)

WATERS

RE: Water Conservation Commission - Water Supply Plant

- Approval of State Dept. of Health Required

This is in response to your letter of March 25, 1960, in which you ask two questions concerning the authority of the State Health Department to approve wells used in municipal water supply systems. Your first question is:

1. Is the policy of the North Dakota State Department of Health requiring, prior to the placing on the market for bids and the construction of municipal sewage or water works, including wells, the submission to and the approval by the Health Department of plans and specifications prepared, stamped, and signed by a registered professional engineer a proper, valid, and legally enforceable policy in conformity with Section 61-0221 of the N.D.R.C. of 1943 as amended by the 1953 Session Laws and with Section 43-1918 of the N.D.R.C. of 1943?"

Section 61-0221 of the 1957 Supplement to the N.D.R.C. of 1943 provides as follows:

SEWAGE AND WASTE DISPOSAL OR DISCHARGE; WATER SUPPLY PLANT; APPROVAL OF COMMISSION REQUIRED. No plan or facility for the disposal or discharge of municipal or industrial sewage or waste substances or works for the water supply of any municipality shall be constructed without the prior approval of the commission, which shall be granted only upon the approval of the state department of health. No such plant, facility, or works shall be operated or maintained except in accordance with the rules and regulations established by the commission for the prevention of water pollution."

The commission referred to is the State Water Commission.

Section 43-1918 of the N.D.R.C. of 1943 provides:

ENGAGING IN CERTAIN WORK WITHOUT BEING REGISTERED PROHIBITED. After September 1, 1944, it shall be unlawful for any person to prepare any plans or specifications for any public work involving professional engineering, for the state or any of its political subdivision, or

any municipality, unless such person is a registered professional engineer. Nothing in this section shall prohibit engaging in any such activity when the contemplated expenditure for the project does not exceed two thousand dollars. The provisions of this chapter shall not apply to the designing or engineering of county and township roads."

We also note that section 61-0215 of the N.D.R.C. of 1943 provides the state department of health with rather broad powers in preventing the pollution of the water of streams, watercourses, underground waters, or to prevent the pollution of waters wherever found.

Section 61-0221 of the 1957 Supplement, quoted above, specifically states that the state water commission cannot approve a municipal plan or facility for the disposal or discharge of sewage or waste substance or works for the water supply of any municipality unless such plan or facility has been approved by the state department of health. Since a well would appear to be an integral part of a works for the water supply of a municipality, we believe that a water well would be included within this provision.

The plan or facility mentioned in this statute must be approved by the state water commission before the municipality may begin construction. Since the approval of the water commission is dependent in the first instance on approval by the state department of health, it is obvious that the state department of health may make certain requirements with respect thereto.

The requirement that all plans and specifications be prepared, stamped and signed by a registered professional engineer prior to calling for bids and the commencement of construction appears to be reasonable in view of the provision of section 43-1918 quoted above. This section makes it unlawful for any person to prepare plans and specifications for a public work involving professional engineering, for a municipality unless such person is a registered professional engineer. Again, it would appear that a municipal water well, supplying at least in part the water needs of the municipality, would be a public work in part the water needs of the municipality, would be a public work requiring the services of a professional engineer in order to be properly constructed. Since we do not believe that it would be proper for a municipality to employ the services of a person who would be in violation of the provisions of this section, by being so employed, it is our opinion that the requirements, as set forth in your first question, are proper, valid and legally enforceable. The requirement is nothing more than that which is already required by statute.

Your second question is stated as follows:

2. Is the policy of the State Department of Health of rejecting plans and specifications when not prepared, stamped, and signed by a registered professional engineer a proper, valid, and legally enforceable policy in conformity with Sections 43-1918 and 43-1925(4) of the N.D.R.C. of 1943.

Section 43-1918 has already been set forth above.

Section 43-1925(4) of the N.D.R.C. of 1943 provides:

This chapter shall not be construed to prevent nor to affect:

4. EMPLOYEES AND SUBORDINATES. The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under subsections 2 or 3 of this section, if such work is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under subsections 2 or 3 of this section;"

The chapter referred to in this section is chapter 43-19 of the N.D.R.C. of 1943 which governs professional engineers and of which section 43-1918, cited above, is also a part.

The provision of section 43-1925(4) does not appear to modify the requirement of section 43-1918. While a registered professional engineer may employ other persons in preparing city plans and specifications, the work must be done under his direct responsibility, checking and supervision and it would appear that the basic, primary responsibility for the plans and specifications would rest with the registered professional engineer.

It is the opinion of this office that the requirements set forth in the two questions which you have submitted and which are quoted above are proper, valid, and legally enforceable, and in accordance with the cited statutory authority.

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Attorney General