

OFFICIAL OPINION NO. 87-36, Need for licensed electrical contractors in public highway contracts

October 21, 1987

Richard L. Howard
Secretary, Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 87-36

Need for licensed electrical contractors in public highway contracts

Dear Secretary Howard:

You have requested an Official Opinion from this Office based upon the following factual situation:

FACTS:

In contracting for public road construction, the Department of Transportation from time to time contracts for road projects in urban areas. Frequently these contracts call for eventual placement of electrical devices, such as traffic signals. It is Department of Transportation policy, as part of the contracting process, to have the general contractor lay the protective pipe or tubing which will eventually contain the wiring for any such electrical device. It is the contention of the State Electrical Commission that such pipe constitutes an electrical "apparatus" under SDCL 36-16-14 and, consequently, must be installed by a licensed electrical contractor.

By letter dated June 15, 1979, my predecessor answered a similar question from the State Electrical Board involving "raceways," but declined to specifically address whether or not a "raceway" is an "apparatus." It was his opinion that under state statutes raceways must be installed by licensed electrical contractors.

Your bidding specifications now call for installation of "sleeves" for eventual placement and protection of electric wiring, if necessary. Based upon the above facts, you have asked the following questions, the first by implication and the second directly:

QUESTIONS:

1. Do "sleeves" or "raceways" fall within the legal definition of "apparatus" under South Dakota's statutes relating to electricians and electrical contractors?

2. Must a licensed electrical contractor install "sleeves" when such are called for in a roadway construction project?

Under the provisions of SDCL 36-16-14, only persons who are electrical contractors may enter into a contract or other type of agreement for installation of electrical wiring, electrical parts or other electrical apparatus. SDCL 36-16-2(3) defines an "electrical contractor" as "a person having the necessary qualifications, training, experience, and technical knowledge to plan, lay out, and supervise the installation and repair of electrical wiring, apparatus, and equipment..." Thus, anyone who contracts with the State for construction that involves installation of an electrical "apparatus" must be a licensed electrical contractor under the provisions of SDCL ch. 36-16. The specific issue here involves those items that fall under the category "apparatus," thus requiring the services of an electrical contractor.

Interpretation of statutes would be far easier if every word had a precise definition. Unfortunately, such is not the case. A technical term may be given a legal definition if it is officially adopted into law, as is the case with definitions found in the National Electrical Code (officially adopted by the State Electrical Commission under the provisions of SDCL ch. 1-26).

Black's Law Dictionary has no definition for the term "apparatus," and the National Electrical Code assigns it no technical meaning. South Dakota Codified Laws do not define it in Chapter 36-16 or elsewhere. Consequently, one must resort to Webster's New Collegiate Dictionary, Eighth Edition, which gives the term its primary definition as "a set of materials or equipment designed for a particular use." Thus, equipment designed to be used specifically as part of an electric current transmission system would fall within the confines of electrical "apparatus." A good example is the technical status given "raceway." The National Electrical Code defines that object as "An enclosed channel designed expressly for holding wires, cables, or bus bars, with additional functions as permitted in this Code." An apparatus is "designed for a particular use" and a raceway is "designed expressly for holding wires, cables, or bus bars," so a raceway is an apparatus.

The term "sleeve" has no specific legal definition within the South Dakota Codified Laws, nor does it have a technical meaning under the National Electrical Code. Turning again to the Eighth Edition of Webster's New Collegiate Dictionary, a sleeve is defined as "a tubular machine part (as a hollow axle or bushing) designed to fit over another part." Webster's New International Directory, Second Edition, gives two additional, limited meanings. A

sleeve can be "A piece of pipe or a thimble for covering a joint, or for coupling two lengths of piping." A second, even more technical definition, gives the term electrical connotation as a metal, figure-eight piece of tubing into which the ends of bare wires are pushed so that twisting the device allows an electrical connection to be made. It is apparent that the term "sleeve," as used in the Department of Transportation bidding process, is used in the more general sense. A "sleeve" is a tube designed and installed expressly for eventually holding wires or cables.

While the Department utilizes "sleeve" in a more general sense of the term, the Department is very specific in what constitutes an electrical sleeve for the bidding process. In a document entitled "Special Provision for Sleeves" and dated March 16, 1987, the Department outlined very limiting criteria for electrical sleeves as installed in construction projects. The sleeves, whether rigid steel or rigid non-metallic, were to meet Underwriter Laboratory standards. The sleeves could "not be less than the electrical trade size." Construction methods used to place sleeves were outlined. The sleeves were to be "sealed with paraffin or other approved sealing compounds." Provisions were to be made for joining the sleeves to junction boxes. Obviously, the Department recognizes these specialized protective electrical tubings as materials designed and installed for a very specific purpose and under certain specified conditions.

In the publication noted in the foregoing paragraph, the Department alternately refers to sleeves as "conduit." In a South Dakota Transportation Commission meeting held on November 28, 1979, the term "conduit" was used interchangeably with "raceway." "Conduit" does not have a legal or technical definition, so one again must use a general definition. Webster's New Collegiate Dictionary, Eighth Edition, gives the term a specific meaning within the electrical trade. That dictionary defines conduit as "a pipe, tube, or tile for protecting electrical wires or cables." Although the National Electrical Code does not provide a trade definition for conduit, it uses the word in a general sense in its definition of "conduit body" thus implying trade usage.

It is clear, then, that the terms "raceway," "sleeve" and "conduit" are generally interchangeable terms for the same item, a strong piece of pipe or tubing designed and installed to protect electrical cable and wiring. Thus, raceways, sleeves and conduits all fall within the definition of "apparatus."

Again, under SDCL 36-16-2(3) an electrical contractor is an individual who has the necessary knowledge, training and experience to install electrical apparatus and is the individual who may do so under the provisions of SDCL 36-16-14. I realize that the State

Electrical Commission has as one of its goals to protect the interests--economic and otherwise--of its licensees. Nonetheless, my review of State statutes, in conjunction with the provisions of ARSD ch. 20:44:05, convinces me that installation of raceways, sleeves or conduits can become very technical. A general contractor is capable of burying a piece of pipe, but I feel that paraffin seals, vapor barriers and the like go beyond the expertise of the average general contractor. Consequently, from both a legal and a commonsense point of view, it is my opinion that electrical contractors are to install protective tubing for electrical wires in construction projects, whether the tubing is called conduit, raceway, sleeve or something altogether different. It is the function assigned to the item, not its name, which controls.

As a side issue, I examined South Dakota law to make certain that the Department of Transportation is covered under the provisions of Chapter 36-16. Unless specifically exempted, the State must follow its laws like any other person or entity. My examination of the bidding and contracting laws contained in Title 5, along with the provisions of Chapter 36-16, uncovers no exceptions for the State, except for a public entity permit for maintenance electricians under the provisions of SDCL 36-16-13.2. Further, even if the State were exempt from the provisions of Chapter 36-16, such exemption from the electrical permit law would not be extended to a private entity working under contract with your Department.

In summary, it is my opinion that raceways or sleeves qualify as "apparatus" under the law and that, as such, they must be installed by electrical contractors licensed by the State Electrical Commission when such apparatus is mandated by a South Dakota Department of Transportation contract.

Respectfully submitted,

Roger A. Tellinghuisen
Attorney General