

February 2, 1996

Joe Hunter, Director
Idaho Electrical Board
Department of Labor and Industrial Services
STATEHOUSE MAIL

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Installation of Communication Circuits

Dear Mr. Hunter:

Your letter of January 10, 1996, requests an Attorney General's opinion on the question whether the Idaho Electrical Board (the "Board") has authority to promulgate rules regulating the installation of communication circuits in the State of Idaho. We conclude that communication circuits, as defined by section 800-1 of the National Electrical Code, are exempt from Board regulation pursuant to Idaho Code § 54-1016 and that the Board's attempt to regulate communication circuits through IDAPA 07.01.04.014.05 in large part exceeds the Board's statutory authority.

BACKGROUND

It is our understanding that this question of the Board's authority to regulate communication circuits arose at a recent Board meeting and that the deputy attorney general in attendance at the meeting voiced his oral opinion that Idaho Code § 54-1016 prohibits Board regulation in this area. Presently, the Board, in the exercise of its rulemaking powers pursuant to Idaho Code § 54-1006, requires a "limited energy electrical license" for "any person who installs, maintains, replaces, or repairs" limited energy electrical products such as:

electric or electronic organs, landscape sprinkler control, security, power limited fire alarms, audio-visual, sound and intercom, data processing, and non-utility owned communications systems: *i.e.*, telephone, radio, television, master antenna television, and community antenna television.

IDAPA 07.01.04.014.05(a) and (b). Persons subject to this rule must obtain a license, pay permit fees and submit to inspections.

Your letter of January 10, 1996, points to an opinion letter of October 8, 1992, by Special Deputy Attorney General Mike Burkett concluding that the Board has authority to promulgate and enforce this rule. You have requested a written opinion on the matter.

STATUTORY ANALYSIS: THE FACT OF AN EXEMPTION

The argument that communications circuits are exempt from Board regulation relies upon Idaho Code § 54-1016. That section states: “Nothing in this act shall be deemed to apply to the installation or maintenance of communication circuits, wires and apparatus;”

The fundamental principle of statutory construction is that the language of a statute will be given its plain, ordinary meaning if it is not otherwise ambiguous. In re Guardianship of Copenhaver, 124 Idaho 888, 865 P.2d 979 (1993). Where a statute is clear and unambiguous, the clear and express intent of the legislature must be given effect. Cameron v. Minidoka Cnty. Hwy. Dist., 125 Idaho 801, 874 P.2d 1108 (1994).

We conclude that section 54-1016 is clear and unambiguous in its statement that, “Nothing in this act shall be deemed to apply to the installation and maintenance of communication circuits, wires and apparatus;” (Emphasis added.) The “act” referred to is chapter 10 of title 54 governing “Electrical Contractors and Journeymen.” Section 54-1016 comes after fifteen prior sections dealing with such matters as the powers and duties and rulemaking authority of the Idaho Electrical Board; the requirement of licensing; the duration, revocation and renewal of licenses; inspection of electrical installations; and similar matters. The nature of the exemptions found in section 54-1016 is therefore spelled out by the fifteen prior sections in the act: None of those sections is to apply to communication circuits, wires and apparatus.

We therefore reject any suggestion that the exemption for the communication circuits found in Idaho Code § 54-1016 is somehow negated by Idaho’s adoption of the National Electrical Code (NEC) in Idaho Code § 54-1001. To the contrary, the express language of the latter statute anticipates statutory exemptions:

[A]ll installations in the state of Idaho of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code

Idaho Code § 54-1001 (emphasis added).

We likewise reject any suggestion that the Board may partially regulate in this area by virtue of its “limited energy electrical license” regulatory framework. If the area of communication circuits is exempt, then it cannot be regulated at all.

THE SCOPE OF THE EXEMPTION

This is not the end of the inquiry. We must next determine the scope of the exemption accorded to “communication circuits, wires and apparatus.” In the context of this act, it would not be reasonable to turn to a dictionary to define these terms. Instead, it is reasonable to assume that the Idaho Legislature intended the National Electrical Code to serve as the source for defining such technical terms. Section 800-1 of the NEC defines “communication circuits” as:

telephone, telegraph (except radio), outside wiring for fire alarm and burglar alarm, and similar central station systems; and telephone systems not connected to a central station system but using similar types of equipment, methods of installation, and maintenance.

Thus, the exemption for “communication circuits” in Idaho Code § 54-1016 applies to telephone and telegraph equipment that transmits communications through a central station. Mr. Burkett’s letter focused on this portion of the NEC definition and concluded that the Idaho Legislature’s exemption of communication circuits extends only to central station switchboards or switching stations as are “typically operated by U. S. West or other telephone companies.” In short, Mr. Burkett read the exemption for communication circuits as exempting only Idaho’s telephone utilities.

We disagree. The NEC definition, on its face, has several additional categories that go beyond telephone/telegraph central station systems, namely:

1. Outside wiring for fire alarm systems;
2. Outside wiring for burglar alarm systems;
3. other similar central station systems; and
4. Telephone systems not connected to a central station system but using similar types of equipment, methods of installation, and maintenance.

Thus, the exemption of Idaho Code § 54-1016, fed through the definitional prism of NEC section 800-1, at a minimum also extends to telephone systems such as private branch exchanges (PBX’s) not owned by or connected to local telephone companies’

central station systems, but which are stand-alones or satellite-connected to other systems.

In addition, the exemption is not limited to central station telephone systems, but extends to fire alarms, burglar alarms and other similar central station systems. Thus, by the express terms of the NEC definition, connections of a local area network computer system to the Internet or of television sets to cable TV would also likely fall within the exemption.

The more difficult question is whether a reviewing court would extend the broad statutory language of Idaho Code § 54-1016 to exempt still further instances of limited energy equipment. The reviewing court will give deference to the Idaho Electrical Board's interpretation of its own statute and to the rules that implement that statute. *See J. R. Simplot Co., Inc. v. Idaho State Tax Commission*, 120 Idaho 849, 820 P.2d 1206 (1991). Nonetheless, a reviewing court might be troubled by a regulatory framework that relies upon an understanding of the term "communication circuits" that was adopted in 1947 and has remained unchanged for nearly five decades. In 1947, it is likely that the Idaho Legislature was primarily concerned to exempt from regulation the work done by telephone companies. At the time, those companies controlled all installation, maintenance and repair work on virtually the entire universe of communications circuitry.

That was a generation before the breakup of AT&T, and long before the average residence had access to cable television, fiber optic data transmission systems, closed-circuit television, complex home entertainment systems, free-standing security and fire alarm systems, intercom systems, remote-control overhead doors and a host of other inventions.

We believe it is entirely possible that a reviewing court would construe "communication circuits" to include the broad present-day spectrum of low electrical energy communications equipment and wiring within the statutory exemption.

CONCLUSION

We conclude that the statutory exemption for "communication circuits" includes more than telephone systems linked to central station switchboards or switching stations operated by telephone utilities. It includes, in addition, a wide variety of communication technologies that link to central stations. It includes, as well, a wide variety of free-standing communication technologies. Finally, it is possible that a reviewing court would extend the exemption still further to include the full spectrum of low energy electrical communication circuits. Under any interpretation, it follows that the Idaho Electrical Board's rule requiring a "limited energy electrical license" for any person who

installs, maintains, replaces or repairs limited energy electrical products is in large part unenforceable. The precise line to be drawn in such matters is beyond the technical expertise of this office. It is clear, however, that technology appears to have passed by the current statutory and regulatory framework and that the matter should be revisited by the Board and, if need be, by the Idaho Legislature.

Sincerely,

JOHN J. MCMAHON
Division Chief
Contracts & Administrative Law Division