

This reminder is particularly timely now because we are implementing the Director's message to reduce the reimbursable work we do for cities/counties/transportation authorities while at the same time assisting these agencies in contracting out this work. Please be sure that in any discussion with Local Agency staff, you stress the provisions in the law and the Agency's responsibility to insure that these functions are performed by licensed persons.

Original signed by

Denny Shields
Program Manager
Right of Way Program

DEPARTMENT OF REAL ESTATE

2201 Broadway
Sacramento, CA 95818
(916) 227-0754



November 6, 1995

Jim Grady
Right of Way Programs
Department of Transportation
1120 N Street
Sacramento, California 94273-0001

RE: LICENSING REQUIREMENTS

Dear Mr. Grady:

The Department of Real Estate has issued the attached legal opinion dealing with the subject of real estate licensing requirements for employees of government agencies.

As you can see from our opinion, the Department of Real Estate's position is essentially the same as Caltrans' with regard to government employees being exempt from DRE licensing laws as long as the employing agency is acting within the scope of its statutory powers. This exemption, however, does not extend to outside independent contractors hired to perform licensed activities on behalf of a government agency.

Please call me once you have had a chance to review the legal opinion. I would be glad to meet with you to discuss the matter if you believe it beneficial. I would also be interested in learning the final outcome of your Fresno office's decision to contract out right-of-way work to Bechtel Corp.

Sincerely,

Original Signed By

STEVEN J. ELLIS
Northern Regional Manager
Enforcement

attachment

cc: John Liberator
Dolores Vazques-Ramos FRDO

State of California - Business, Transportation and Housing Agency

Department of Real Estate

Memorandum

To: STEVE ELLIS, Regional Manager
via Larry A. Alamao, Attorney in Charge

Date: October 30, 1995

From: David A. Peters
Sacramento Legal Section

Subject: LICENSING REQUIREMENTS
CALTRANS & Bechtel Corp.

This is in response to your request dated October 12, 1995, for a legal opinion concerning the following:

QUESTION 1: Are Department of Transportation (CALTRANS) employees (right-of-way agents) exempt from real estate license requirements when acting on behalf of the State. If so, what is the legal basis for the exemption?

CONCLUSION: CALTRANS employees (right-of-way agents) are exempt from real estate license requirements when performing licensed acts on behalf of CALTRANS. CALTRANS employees (right-of-way agents) are excluded from the general statutory provisions requiring licensure because such inclusion would result in an infringement upon CALTRANS sovereign governmental powers.

QUESTION 2: Are ex-CALTRANS employees working for Bechtel Corporation exempt from real estate license requirements when acting as right-of-way agents pursuant to a contract between CALTRANS and Bechtel Corporation?

CONCLUSION: Bechtel employees (ex-CALTRANS right-of-way agents) are not exempt from real estate license requirements when performing licensed acts pursuant to a contract between CALTRANS and Bechtel Corporation. Requiring licensure of Bechtel employees does not infringe upon CALTRANS sovereign governmental powers and therefore said employees are not exempt from licensure.

ANALYSIS:

Section 10130 of the Business and Professions Code, provides that it is “unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within the state without first obtaining a real estate license from the department.” (Emphasis added).

Section 10006 of the Business and Professions Code defines the term person for purposes of the licensing statute to include "... corporation, company and firm."

To determine whether the general terms of the statute apply to CALTRANS as a public jurisdiction, the rules of statutory construction must be followed.

The California Supreme Court has dealt with the issue as follows:

"In the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon the sovereign governmental powers. 'Where ... no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.' [Citations] (City of Los Angeles vs. City of San Fernando (1975) 14 Cal3d 199, 276-277; accord Regents of University of California vs. Superior Court (1976) 17 Cal.3d 533,536.)

CALTRANS is a State agency created under provisions of Section 14000 et seq. of the Government Code. CALTRANS authority includes the purchase and/or sale of rights of way necessary for State highway purposes. Therefore, the described licensed activities (pursuant to Section 10131 of the Business and Professions Code) performed by right-of-way agents employed by CALTRANS fall within the scope of CALTRANS' statutory powers.

Requiring the CALTRANS employees to be licensed would interfere with the fundamental purpose of another state agency.

There have been several opinions issued by the Attorney General dealing with the applicability of other state laws to governmental agencies. In 63 Ops. Cal. Atty. Gen. 198 (1980) the Attorney General states: "We have previously observed in 34 Ops. Cal. Atty. Gen. 194, 195 (1959) that where the inclusion of the state or of its political subdivisions would result in the impairment of sovereign powers, the word "person" as used in a statute will not be held to include such public agencies unless there is an express indication that such was the legislative intent. [Citations] on the other hand, governmental entities have been held subject to legislation which by its terms applies to any "person." [Citations] The crucial distinction in each of these cases is whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired, [Citations], while no exception is provided when the agency's public purpose is unaffected."

In In re Miller's Estate (1936) 5 C2d 588, the right of Los Angeles County Counsel to render legal services to a public administrator was questioned under the theory that the county was thereby violating a prohibition against the practice of law by a corporation, in this case a

public corporation. The Supreme Court found the contention to be “without merit.” The court pointed out that the state is not practicing engineering in violation of the law requiring a license for such practice when the Department of Public Works collects fees for engineering services rendered by employees of the Department, or in passing, on plans and specifications and in supervising the construction of dams; nor is the State Division of Architecture guilty of a misdemeanor in practicing architecture without a certificate in the collection of fees for services rendered by employees of that department in the approval or rejection of plans for school buildings. The court determined that in neither case was the state agency practicing a profession without a license. It was simply engaging in the performance of a public service authorized by statute.

With respect to Bechtel Corporation employees, there is no existing exemption from real estate licensure.
