



**THE ATTORNEY GENERAL
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January 23, 1975

The Honorable Charlie Chapman
Executive Director
Structural Pest Control Board
313 East Anderson Lane
Chevy Chase III
Austin, Texas 78752

Opinion No. H- 504

Re: The applicability of the
licensing fee provisions of
the Texas Structural Pest
Control Act to employees
of persons who engage in
the business of Structural
Pest Control.

Dear Mr. Chapman:

You have asked our opinion as to whether the Structural Pest Control Board may require employees of an applicant or a licensee (for or holding a license under the Texas Structural Pest Control Act) to pay the required license fee if said persons' duties consist entirely of on site sales, solicitations, estimates or bids.

You particularize your opinion request by further observing:

Section 7(a) of the Texas Structural Pest Control Act authorizes the Structural Pest Control Board to collect from each applicant for a license a fee of between \$5.00 and \$15.00 for "each employee of the applicant who is engaged in structural pest control services."

The Texas Structural Pest Control Act, article 135b-6, V. T. C. S., requires persons engaging in the business of structural pest control to obtain a license before conducting such a business. Sec. 5(a), art. 135b-6. A temporary license may be obtained by those who engaged in such work prior to the effective date of the Act, and a two year grace period is

provided within which such persons must fully qualify under the Act and pay the regular licensing fees required by the Act. Sec. 5(b).

Section 7(a) provides for the following licensing fees:

Sec. 7(a) An applicant for an initial or renewal license shall accompany his application with a fee of \$50 for each place of business located in the State and a fee of between \$5 and \$15, as determined by the board, for each employee of the applicant who is engaged in structural pest control services. This is not to apply to those locations serving only as answering services for a licensed business.

Section 2 defines those persons who are subject to the provisions of the Act, as those "engaged in the business of structural pest control," and, as such, must accordingly secure the license required by section 5 and pay the licensing fee required by section 7(a):

(a) For purposes of this Act a person shall be deemed to be engaged in the business of structural pest control if he engages in, offers to engage in, advertises for, solicits, or performs any of the following services for compensation:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or the immediate adjacent outside areas;

(2) making inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations;

(3) making contracts, or submitting bids for, or performing services designed to prevent, control, or eliminate such infestations by the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices.

(b) as used in this Act, "person" means an individual, firm, partnership, corporation, association, or other organization, or any combination thereof, or any type of business entity. (Emphasis supplied)

It is therefore clear that persons who, in the course of a structural pest control operation, solicit and sell pest control services or make estimates of the cost of such services and bid for the performance of these services, perform services that come within the ambit of the Act.

However, section 11(3) excludes "employees" of licensees from the operation of the Act, providing:

Sec. 11 The provisions of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

. . . .

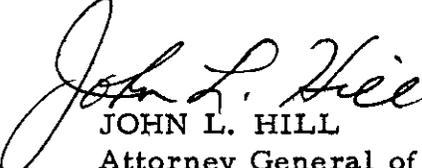
(3) an employee of a person licensed to engage in the business of structural pest control; . . .

Accordingly, an employee of one engaged in the business of structural pest control who solicits and sells pest control services and who estimates the cost of such work and submits bids for its performance, does not have to secure the license or pay the fees required by section 7(a). However, the holder of a license or an applicant therefore must pay the \$5.00 to \$15.00 fee, as required by section 7(a), for each employee who engages in the selling of pest control services as a part of the employers total license fee.

SUMMARY

Employees, who solicit and sell structural pest control services for a person engaged in the business of structural pest control, do not have to be licensed under the Texas Structural Pest Control Act or pay the licensing fees provided for by the Act. However, their employer must pay the \$5.00 to \$15.00 fee for such employee as required by section 7(a) of the Act.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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