



University of North Texas

Texas College of Osteopathic Medicine



Office of the Chancellor

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MBJ RQ-596

August 6, 1993

Quinn

VIA CERTIFIED MAIL

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Building
P.O. Box 12548
Austin, TX 78711-2548

FILE # ~~AL 21764-73~~
I.D.# 21764

Dear General Morales:

As Chancellor of the University of North Texas (UNT), I am hereby requesting, pursuant to Section 402.042 V.T.C.S., an Attorney General's opinion interpreting Article 8308-3.23(c) of the Workers' Compensation Act and expanding on your Letter Opinion No. 92-60. Your opinion is sought to determine what constitutes a "building or construction contract" under subpart (c) and (d) of Article 8308-3.23 and whether there are any de minimis exceptions to the requirement that a contractor on a building or construction project entered into by the state or a political subdivision of the state is required to obtain workers' compensation insurance coverage for its employees who work on the project. Additionally, your opinion is sought to determine the effect of a contractor filing a TWCC-83 form in lieu of obtaining workers' compensation coverage.

Article 8308-3.23(c) provides:

In a building or construction contract entered into by this state or a political subdivision, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

Article 8308-3.23(d) clarifies subpart (c):

(d) (1) In this section "building or construction" includes:

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- (A) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;
 - (B) remodeling, extending, repairing, or demolishing a structure; or
 - (C) otherwise improving real property or appurtenances to real property through similar activities.
- (2) The employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in building or construction.

At UNT, the University is continuously hiring third parties to perform small projects on campus. Examples of these types of projects include: (1) the furnishing and installation of an item in a building (such as the installation of carpeting for a single office, or a wall system to divide a room in half, etc.); (2) the service or repair of a certain item (such as the replacement of a glass window pane; the repair of a malfunctioning electronic door; resealing seams and restretching a carpet, etc.); (3) small sheet metal projects; (4) specialized pipe fitting work; or (5) annual service contracts for services such as elevator maintenance and fire alarm maintenance.

The University is uncertain whether such projects constitute "building or construction" projects pursuant to Article 8308-3.23(c) and (d). The University can complete these types of projects in a cost effective manner by using the services of a sole independent contractor or a small business. However, such contractors frequently are not covered by workers' compensation insurance. In contrast, large contractors, who are covered by workers' compensation insurance, often charge a substantially higher price to perform the same type of services. Do these projects constitute "building or construction" contracts pursuant to Article 8308-3.23(c) and (d), for which workers' compensation insurance is required?

If such projects are categorized as "building or construction" projects, are there any de minimis exceptions to Article 8308-3.23(c)? Is a state entity entitled to hire a contractor that is not covered by workers' compensation insurance if the contractor is a sole independent contractor or a contractor with only a few employees? Are construction or building contracts below a certain dollar amount exempt from the workers' compensation requirements of Article 8308-3.23? For example, is a one man shop performing a \$50.00 carpet repair or a \$150.00 plate glass replacement at the University required to have workers' compensation coverage? Such

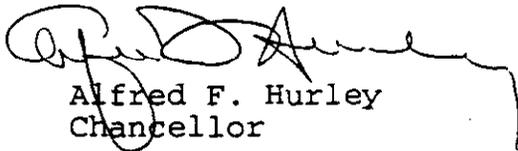
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a requirement would effectively preempt the University from using many of the smaller, less expensive vendors. What is the minimum dollar amount applicable to the Workers' Compensation Act, if any?

When a contractor does not have workers' compensation insurance, and he/she is bidding to work on the types of projects listed above, what is the effect of the contractor submitting a Texas Workers' Compensation Commission Form TWCC-83? Is the submission of the TWCC-83 Form sufficient to comply with last sentence of Article 8308-3.23(c) and to satisfy the requirements of the Workers' Compensation Act? As a state entity, does UNT constitute a "hiring contractor" as mentioned in the TWCC-83 Form, and is it appropriate for UNT to use and accept TWCC-83 forms?

I would appreciate your determination on this request, either informally, through a letter response, or formally, through an Attorney General's Opinion.

Sincerely,


Alfred F. Hurley
Chancellor