

# STATE OF MAINE

Inter-Departmental Memorandum Date December 6, 1983

To Robert Batteese, Board of  
Pesticides Control

Dept. Agriculture, Food and  
Rural Resources

From Jeffrey Pidot, Assistant

Dept. Attorney General

Subject Lewiston Housing Authority

I have reviewed Eric Samp's letter, in which he asserts, as counsel to the Lewiston Housing Authority, that employees of that entity need not be licensed as commercial applicators of pesticides since the Housing Authority is not a local government. In his analysis, Mr. Samp focuses upon the second sentence in the statutory definition of commercial applicator, which specifically relates to "officials or employees of federal, state or local governments." 22 M.R.S.A. § 1471-C(5). While I believe that a public housing authority is in fact one of the types of entities which the Legislature intended to include within the scope of this sentence, I will not debate the opinion of the Housing Authority's counsel that that Authority does not, technically speaking, constitute a local government. Regardless, I believe the employees of the Authority who are involved in pesticide spray applications on rental properties should be licensed.

The question involved here cannot be answered solely by inquiring into the meaning of the particular sentence in the statute highlighted by the Authority's attorney. One must also ask whether an employee of the Housing Authority, who is engaged in applying general use pesticides in apartments leased by the Authority to private individuals, is a commercial applicator as that term is defined in the first sentence of § 1471-C(5). In pertinent part, that sentence defines "commercial applicator" as "any person, except a government pesticide supervisor, . . . who uses general use pesticides in custom application. . . ." "Custom application" is, in turn, defined as "any application of any pesticide for hire." Section 1472-C(5)(A). The term "for hire" is not defined, although it is an important one in determining the applicability of the statute in this case. I believe that a reasonable interpretation of this term would be that it includes any pesticide spray services which are performed by one person for the benefit of another under a contract or other arrangement by which compensation for these services is to be made. Accordingly, if I receive compensation for spraying your house, then I have been hired by you to perform this service. Similarly, if a person in the business of renting property

sprays that property after it is leased as part of the services performed under the lease contract, then I believe it reasonable to construe such services as being "for hire."

Under this analysis, an employee of a landlord (including a housing authority), who sprays leased properties, as part of the landlord's services performed for its tenants and for which the authority receives rent, must be seen as a "commercial applicator" under the statute. While this analysis (or at least this sentence) may at first appear complex, it is, I think, a fair reading of what the Legislature intended in cases where one party is performing spray services on the property or for the benefit of another. Moreover, I do not know of any significant burden that such an interpretation would place upon a public housing authority. It may seek licensing for its employee, or, alternatively, it may retain the services of a licensed private exterminator for purposes of spraying properties rented by it. In either case, the protection afforded the public by the licensing statute will be retained.

An entirely separate legal inquiry may be made into the question of whether one or more employees of a housing authority may be considered "government pesticide supervisors", also required to be licensed under the statute. This term is defined by § 1471-C(11)(A) to mean "any federal, state or local government agency, official or employee, . . . who, in the course of his duties, responsibilities or employment, supervises the use of any pesticides." This is a troublesome, open-ended definition. However, I believe one reasonable interpretation would be that the Lewiston Housing Authority constitutes a local government agency, even if it is not technically a local government. It is, in fact, a public instrumentality which has been created by a local government in order to perform certain governmental services. Under this interpretation, whoever supervises the application of pesticides on behalf of the Housing Authority must be licensed as a government pesticide supervisor. In addition, the statutes provide that in such a case the person who is directly involved in applying such pesticides must also be licensed. Thus, § 1471-D(2)(A) provides as follows:

"No government pesticide supervisor may supervise the use of any pesticide without prior certification from the Board, provided that the person who actually uses the pesticide must be certified."

In sum, it is not necessary to deal with the question of

whether the Lewiston Housing Authority is technically a local government. Regardless of that issue, I believe that the interpretation which should be given the statute is that employees of the Authority who are involved in applying pesticides to privately rented properties should be licensed. I also believe that such an interpretation is a fair reading of what the Legislature had in mind in creating your regulatory program.

/d

CLIFFORD, CLIFFORD, SAMP & STONE

ATTORNEYS AND COUNSELORS AT LAW

640 MAIN STREET  
P.O. BOX 590  
LEWISTON, MAINE 04240

(207) 784-7381

JERE R. CLIFFORD  
WILLIAM H. CLIFFORD  
FREDERICK S. SAMP  
ALAN G. STONE

JOHN D. CLIFFORD (1887 - 1956)  
W. H. CLIFFORD (1889 - 1972)

November 28, 1983

Mr. Robert I. Batteese, Jr.  
Pesticides Control Board  
State House Station No. 28  
Augusta, ME 04333

Re: Lewiston Housing Authority

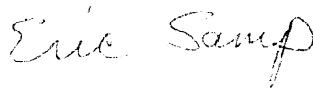
Dear Mr. Batteese:

I am writing to you on behalf of Lewiston Housing Authority in response to your letter of November 18, 1983 to Mr. John Ponte and pursuant to our telephone conversation. It is my understanding that under 22 M.R.S.A. § 1471-C(5), a person is a "commercial applicator" requiring a license from your board if he applies any pesticide, restricted or non-restricted, in connection with his duties as an official or employee of federal, state or local government. Your inquiry is apparently concerned with whether Mr. Ponte, as an employee of the Lewiston Housing Authority, fits within that definition when he uses non-restricted chemicals in the Authority's buildings.

The Lewiston Housing Authority is a public body corporate organized under the provisions of 30 M.R.S.A. Chapter 239, Subchapter II. As such, it is a corporate entity separate from the City of Lewiston or from any agency of State government. It has no power to levy or collect taxes or special assessments, nor does it have any authority to obligate the City of Lewiston in the issuance of any bonds. It is our position, therefore, that employees of the Lewiston Housing Authority are not employees of federal, state, or local government. Therefore, we do not believe that they need to be licensed in order to apply non-restricted chemicals.

Very truly yours,

CLIFFORD, CLIFFORD, SAMP & STONE



Frederick S. Samp

FSS/jt

cc: Sandra Slemmer

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