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REPLY TO:  
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December 6, 2019

Frank Wiesner  
Executive Director/Secretary-Treasurer  
North Carolina Licensing Board for General Contractors  
5400 Creedmoor Road  
Raleigh, NC 27612

**RE: *Advisory Letter Regarding N.C. Gen. Stat. § 89G-3(11) and the possibility to extend the NC General Contractor exemption to hold an Irrigation License to a Subcontractor***

Dear Mr. Wiesner:

This letter is a response to the question presented to the North Carolina Irrigation Contractors' Licensing Board (hereinafter "Irrigation Board" or "Board") by the North Carolina Licensing Board for General Contractors asking if a North Carolina General Contractor can delegate work on irrigation projects over \$2,500 to an unlicensed subcontractor since the General Contractor is exempt from licensure by the Irrigation Board. The Irrigation Board has referred this question to me for response.

It is my opinion that the licensure exemption only applies to a licensed General Contractor in North Carolina. Any subcontractor hired by the General Contractor is required to carry either an Irrigation Contractor license or a General Contractor license if the proposed irrigation project exceeds \$2,500 in cost and the subcontractor does not fall under any other licensure exemption.

#### Analysis

North Carolina General Statute § 87-1, which defines "general contractor" and states exemptions from that definition, references obliquely the supervisory power of general contractors, but is otherwise silent on general contractors' duties in hiring and supervising subcontractors. N.C. Gen. Stat. § 87-1 does not give a general contractor the power to hire a subcontractor and extend his/her license onto the subcontractor. Where the letter of the law is silent, the courts have interpreted the spirit of the law governing general contractors "to protect the public from incompetent builders." Vogel v. Reed Supply Co., 277 N.C. 119, 130, 177 S.E.2d 273, 280 (1970).

If a general contractor delegates a task to a subcontractor, that subcontractor must be licensed to perform that task. Baker Const. Co. v. Phillips, 333 N.C. 441, 447, 426 S.E.2d 679, 683 (1993). Our Supreme Court interpreted Article 1, Chapter 87 of the North Carolina General Statutes to permit “a general contractor to do all the construction work himself when his license classifications cover each type of work required by the contract. It also permits a general contractor to play a supervisory role, hiring subcontractors whose licenses are classified for the work in question to perform work for which the general contractor's license is not classified.” Id. at 447, 426 S.E.2d at 683. In other words, when the general contractor is acting as a supervisor, and not doing the work himself, then the subcontractor must be individually qualified and licensed to do the job at hand.

N.C. Gen. Stat. § 89G-2 prohibits the practice of irrigation construction or contracting in the absence of licensure as an irrigation contractor by the Irrigation Board. The statute is in place to protect the public and the environment from potential harm by an unlicensed individual that performs irrigation work.

It is therefore my conclusion that the exemption under N.C. Gen. Stat. § 89G-3(11) applies to the general contractor licensed under N.C. Gen. Stat. § 87-10(b) only. This exemption is personal to the general contractor and cannot be projected onto any unlicensed subcontractors in regard to irrigation work valued over \$2,500.

Please do not hesitate to contact me with any questions or concerns. I can be reached by email [jbradshaw@ncdoj.gov](mailto:jbradshaw@ncdoj.gov) or phone (919) 716-6652.

Please be aware that this is an advisory letter. It has not been reviewed and approved in accordance with the procedures for issuing a formal Attorney General's Opinion.

Sincerely,



Juliane L. Bradshaw  
Assistant Attorney General