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October 25, 2004

Jay Holmquist
General Manager
Nebraska Rural Electric Association
Box 82048, 800 So. 13th Street
Lincoln, NE 68501

Re: House Moving

Dear Jay:

QUESTION

You have asked whether there are any laws prohibiting the lifting of overhead power lines by house movers for the purpose of maneuvering a house they are moving to clear the overhead power lines.

BRIEF ANSWER

Yes.

ANALYSIS

A. Nebraska's High Voltage Law. *Neb. Rev. Stat.* §§ 48-436 to 48-442 prohibits the unauthorized lifting of high voltage power lines.

Neb. Rev. Stat. § 48-437 provides:

No person, firm, or corporation, or agent of the same, shall require or permit any employee, except an authorized and qualified person, to perform and ***no person, except an authorized and qualified person, shall perform any function within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442***; or enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair ***or other operations***, or to erect, install, operate or store in or upon such premises any tools, machinery, equipment, materials, or structures,

including house-moving, well-drilling, pile-driving or hoisting equipment, within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442, unless and until danger from accidental contact with such high voltage conductors has been effectively guarded against in the manner prescribed in sections 48-436 to 48-442.

Neb. Rev. Stat. § 48-438 provides:

(1) Except as provided in subsections (2) and (3) of this section, the operation or erection of any tools, machinery or equipment, or any part thereof capable of vertical, lateral or swinging motion; the handling or storage of any supplies, materials or apparatus ***or the moving of any house or other building, or any part thereof, under, over, by or near overhead high voltage conductors, shall be prohibited if at any time during such operation,*** or other manipulation it is possible to bring such equipment, tools, materials, building or any part thereof ***within ten feet of such overhead high voltage conductors;*** *Provided,* that the minimum distance required for cranes or other boom type equipment in transit with no load and with raiseable portions lowered shall be four feet, ***except where such high voltage conductors have been effectively guarded against danger from accidental contact, by either:***

(a) The erection of mechanical barriers to prevent physical contact with high voltage conductors;

(b) Deenergizing of the high voltage conductors and grounding where necessary;
or

(c) Temporary relocation of overhead conductors, which relocation shall be performed by the owner or operator of the overhead power conductors.

(2) The minimum distance required by this section for cranes or other boom type equipment in transit with no load and with raiseable portions lowered shall be four feet.

(3) Nothing in sections 48-436 to 48-442 shall prohibit the moving of general farm equipment under conductors where clearances required by sections 48-436 to 48-442 are maintained.

Neb. Rev. Stat. § 48-436 defines the following terms:

(1) High voltage shall mean a voltage in excess of seven hundred fifty volts, measured between conductors, or measured between the conductor and the ground; and

(2) Authorized and qualified persons shall include employees of any electric utility, ***public power district or public power and irrigation district with respect to the electrical systems of such utilities,*** employees of communications utilities, common carriers engaged in interstate commerce, state, county or municipal agencies with respect to work

relating to their facilities on the poles or structures of an electric utility or railway transportation system, employees of a railway transportation system or a metropolitan utilities district engaged in the normal operation of such system, and employees of a contractor with respect to work under his supervision when such work is being performed under contract for, or as an agent of, the owner of the above utilities, companies or agencies.

Neb. Rev. Stat. § 48-440 provides:

Before any operations are to be performed within ten feet of any overhead high voltage conductors, or whenever any equipment in transit as described in subsection (2) of section 48-438 can come within four feet of any overhead high voltage conductors, the person or persons responsible for the work to be done or moving of the equipment shall be responsible for compliance with sections 48-436 to 48-442. **Such person or persons shall notify the operator of the overhead high voltage conductors and the Commissioner of Labor, on forms prescribed by the commissioner, not less than forty-eight hours before proceeding with such work, of the time, place, duration, and nature of the work to be performed, and the method of guarding against accidental contact;** which shall be one of the methods provided in section 48-438 as may be agreed upon with such operator.

Neb. Rev. Stat. § 48-442 provides:

Any person, firm, or corporation, or any employee thereof violating any provisions of sections 48-436 to 48-442 **shall be guilty of a Class V misdemeanor.**¹ Each day's failure to comply with any of the provisions of sections 48-436 to 48-442 shall constitute a separate violation.

The above statutes clearly provide that a house mover must notify the owner or operator of high voltage lines 48 hours in advance of any house moving if the house comes within ten feet of a high voltage power line. The house mover must also report such move to the Department of Labor. A violation of the above law is a Class V misdemeanor.²

B. Other Statutes that may be applicable.

Neb. Rev. Stat. § 70-310 provides:

Any person who willfully and maliciously breaks, injures, removes, or otherwise interferes with any electric poles or wires is guilty of a Class IV misdemeanor.³

¹ Class V Misdemeanor: Maximum penalty – no imprisonment, \$100 fine; Minimum penalty – none.

² *Id.*

³ Class IV Misdemeanor: Maximum penalty – no imprisonment, \$500 fine; Minimum penalty – \$100 fine.

Neb. Rev. Stat. § 76-2325.01 provides:

Any person who willfully and maliciously breaks, injures, destroys, or otherwise interferes with the poles, wires, or other facilities of any telecommunications or railroad company or electric light and power company in this state or who willfully and purposely interrupts or interferes with the transmission of telecommunications messages or the transmission of light, heat, and power in this state shall be subject to the action and penalty prescribed in section 28-519.

Neb. Rev. Stat. § 28-519 provides:

(1) A person commits criminal mischief if he or she:

(a) Damages property of another intentionally or recklessly; or

(b) Intentionally tampers with property of another so as to endanger person or property; or

(c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(2) Criminal mischief is a Class IV felony⁴ if the actor intentionally or maliciously causes pecuniary loss of one thousand five hundred dollars or more, **or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power**, or other public service.

(3) Criminal mischief is a Class I misdemeanor⁵ if the actor intentionally or maliciously causes pecuniary loss of five hundred dollars or more but less than one thousand five hundred dollars.

(4) Criminal mischief is a Class II misdemeanor⁶ if the actor intentionally or maliciously causes pecuniary loss of two hundred dollars or more but less than five hundred dollars.

(5) Criminal mischief is a Class III misdemeanor⁷ if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than two hundred dollars, ***or if his or her action results in no pecuniary loss.***

⁴ Class IV Felony: Maximum penalty – 5 years imprisonment, or \$10,000 fine, or both; Minimum penalty – none.

⁵ Class I Misdemeanor: Maximum penalty – not more than 1 year imprisonment, or \$1,000 fine, or both; Minimum penalty – none.

⁶ Class II Misdemeanor: Maximum penalty – 6 months imprisonment, or \$1,000 fine, or both; Minimum penalty – none.

⁷ Class III Misdemeanor: Maximum penalty – 3 months imprisonment, or \$500 fine, or both; Minimum penalty – none.

Neb. Rev. Stat. § 28-1311 provides:

(1) A person commits the offense of interfering with a public service company if he willfully and purposely interrupts or interferes with the transmission of telegraph or telephone messages or the transmission of light, heat and power in this state.

(2) Interference with public service companies is a Class II misdemeanor.⁸

C. Trespass to chattels.

The tort of trespass to chattels is a tort recognized in other jurisdictions. However, we can find no Nebraska cases which recognize this tort. Without a Nebraska appellate court decision recognizing this tort, the viability of this cause of action is speculative. For those that are interested in learning more about this tort, see *Woodis v. Oklahoma Gas & Elec. Co.*, 704 P.2d 483 (Okla. 1985). In this case, parents of a 15 year boy who climbed to the top of an electric company's transmission tower and was electrocuted sued the electric company claiming the company violated the National Electric Safety Code. The electric company alleged that they were not liable because the child was trespassing, but the court found the electric company liable for the child's death. Although the Woodis Court found that the 15-year old boy occupied the status of a trespasser, the Oklahoma Supreme Court affirmed the trial court's ruling in favor of the parents of the deceased boy. The court decided the case by ultimately holding that the electric company was in violation of the National Electrical Safety Code, which the court considered negligence *per se* and a breach of duty on the part of the electric company owed to the general public, including trespassers, through the invocation of a police power regulation.

D. Conclusion.

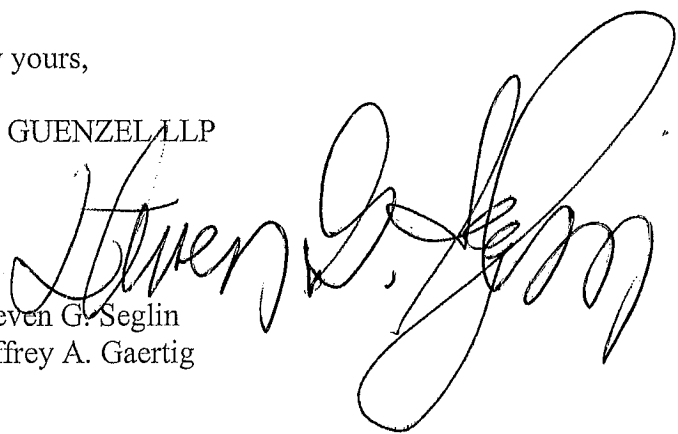
A house mover who fails to notify the owner or operation of a high voltage line 48 hours prior to the move is in violation of the High Voltage Law and subject to criminal prosecution. The other statutes referred to above require intent to interfere with power line. Although the movers obviously intend to move the line, it seems rather doubtful that it could be proven that they intended to interfere with the transmission of electric power.

Very truly yours,

CROSBY GUENZEL LLP

By

Steven G. Seglin
Jeffrey A. Gaertig



⁸ See footnote 6, *supra*.