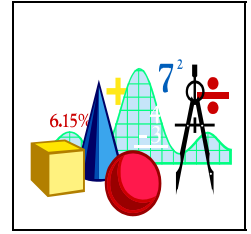


CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Trades & Suppliers



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EXCAVATING CONTRACTOR HAS NON-DELEGABLE DUTY

An excavating contractor has a non-delegable duty to inform itself of the location of underground utility lines in order to avoid damaging them. The Revised Code of Ohio provides specific, mandatory requirements of prior notifications in connection with excavation work and protection of underground utility lines. A recent opinion of the Court of Appeals of Ohio reaffirmed this duty, citing several earlier cases in which this duty was also affirmed:

“In Ohio, a non-delegable duty is imposed upon an excavator to inform himself as to whether utility lines exist below ground so that he may avoid damaging them. *GTE Tel. Operations v. J&H Reinforcing & Structural Erectors, Inc.*, 4th Dist. No.01CA2808, 2002-Ohio-2553 WL1291953, at Para.9, citing *GTE North, Inc. v. Carr* (1993), 84 Ohio App.3d 776, 779, 618 N.E.2d 249. When an excavator fails to perform such duty, he proceeds at his own risk and incurs liability for damage to utility lines.”

* * *

You would not think any duty small,
If you yourself were great.

[George Macdonald](#) (1824–1905)

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts, Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Management / Litigation Support.

Happy Holidays to all of our readers.

