OFFICIAL OPINION NO. 50

Mr. Kenneth L. Schellie,
Director, Indiana Economic Council,
610 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter which reads as follows:

"We have learned recently of two instances where a question has arisen concerning the qualifications of persons being appointed by city and county plan commissions in Indiana. These commissions are established and operating under the new planning and zoning act, Chapter 174 of the Acts of 1947. In one instance it concerned the employment of a full time planning director by the commission, and in another the employment of professional services by contract.

"In each instance the commission was operating under Section 23 of the aforementioned act, which provides that the commission may appoint and prescribe the duties and fix the compensation of such employees as are necessary for the discharge of the duties and responsibilities of the commission. The commission also may make contracts for special or temporary services.

"No other qualifications for employment of such personnel, either directly or by contract, seem to be called for. In each instance, however, the point was made that the person so employed, either a full time employee or person employed by contract to perform special services, was required to be a registered professional engineer.

"I believe that view was taken on the basis of some language contained in an act, concerning the registration of professional engineers, passed by the 1947 Legislature.

"Being familiar with the employment of such persons by plan commissions for many years, this is the first time I have ever known of this question being
raised, either in Indiana or in any other state. I would like to have your opinion as to whether or not any employe appointed by the city, town and county plan commissions, or any person whom they may contract for special or temporary services, to carry out the duties and responsibilities of local plan commissions as contemplated by Chapter 174 of the Acts of 1947, is required to be a registered professional engineer."

The act concerning the registration of professional engineers passed by the 1947 Legislature and referred to by you is Chapter 262, page 1055, of the Acts of 1947. However, this act was an amendment of certain sections of Chapter 148 of the Acts of 1935. Section 2 of the Act of 1935 as amended in 1947, Burns', Section 63-1518 (1948 Supplement) provided in part as follows:

"(a) The term ‘professional engineer’ as used in this act, shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to engage in the practice of professional engineering as hereinafter defined.

"* * *

"(c) The term ‘practice of professional engineering’ as used in this act, shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and designs, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects. A person shall be deemed to practice or offer to practice professional engineering, within the meaning and intent of this act, who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use
of some other titles implies that he is a professional engineer, or who holds himself out as able to perform, or who does perform any engineering service or work of any other professional engineering service. The practice of professional engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

“(d) The term ‘land surveyor,’ as used in this act, shall mean a person who engages in the practice of land surveying, as hereinafter defined.

“(e) The term ‘practice of land surveying,’ as used in this act, includes surveying of areas for their correct determination and description and for the conveyancing, or for the establishment, or re-establishment of land boundaries, and the plotting of land and subdivisions thereof.”

Section 20 of said Act of 1935, as amended in 1947, Burns’, Section 63-1536 (1948 Supplement) exempts certain persons from the provisions of this act and includes among the exemptions officers and employees of the government of the United States. However, no exemption is provided for officers or employees of the State of Indiana or its political subdivisions.

I am unable to tell from your letter the nature of the services of the employees in question referred to as being employed by city and county planning commissions. Before any such employee could perform services which are included within either the definition of the practice of professional engineering or within the definition of the practice of land surveying, as contained in the act above quoted, it would be necessary that he be registered as a professional engineer or as a professional land surveyor, respectively. More specifically, if such employee in the performance of his duties is called upon to survey areas for their correct determination and description or for the establishment or re-establishment of land boundaries or the plotting of land and subdivisions thereof, it would be necessary that he obtain a certificate as a land surveyor.

Also, I call your attention to Section 19 of Chapter 148 of the Acts of 1935, as amended in 1947, Burns’, Section 63-1535 (1948 Supplement), which is as follows:
“(a) Except as hereinafter otherwise provided, no county, city, town, township, school corporation or other political subdivision of this state shall engage in the construction or maintenance of any public work involving the practice of professional engineering or land surveying for which plans, specifications, estimates have not been prepared, certified and sealed by, and the construction and maintenance executed under the direct supervision of, a professional engineer or land surveyor.

“(b) No city, or town plat, or plat of any addition thereto or any subdivision thereof, or any plat dividing land into streets, lots or blocks, shall be received for record, which has not been prepared by a registered professional engineer or a registered land surveyor and certified and sealed by him as such.

“(c) No official of this state, or of any city, town, county, township or school corporation thereof, now or hereafter charged with the enforcement of any law, ordinance, or regulation relating to the construction or alteration of buildings or structures, shall use or accept or approve any plans or specifications that have not been prepared by or under the supervision of a registered professional engineer or registered architect and stamped with the seal of such registered professional engineer or registered architect.

“(d) The provisions of this section shall not be construed to affect or prevent the practice of architecture by an architect who is duly qualified and registered under the laws of this state; nor to apply to any building or structure costing ten thousand dollars ($10,000) or less and not exceeding thirty thousand (30,000) cubic feet; nor to alterations to any building or structure costing ten thousand dollars ($10,000) or less, which do not involve changes affecting the structural safety thereof; nor shall the provisions of this section be so construed as to abridge or otherwise affect the powers of the administrative building council of Indiana or any other state board or department to issue rules and regulations governing the safety of buildings or structures.
“(e) All maps required to show the underground workings of any mine, within this state, shall be prepared by a professional engineer or land surveyor, and shall be certified and sealed by such professional engineer or land surveyor.”

The above section would be applicable to plats, plans and specifications prepared by an employee of a city or county planning commission and such plats, plans or specifications could not be received for record and could not be approved by any official of the state or any official of the city, town, county, township or school corporation, unless they were prepared by or under the supervision of a registered land surveyor or registered professional engineer, as the case might be.

In summary, if and when the duties of an employee of a planning commission require him to perform any services which fall within the definition of a professional engineer, as above set forth, then before performing such duties he must obtain a registration certificate as a professional engineer or, if his duties require him to do any of the things which are included within the definition of a land surveyor, then before performing such duties he must obtain a certificate as a land surveyor. The same would apply to contractual services.

OFFICIAL OPINION NO. 51
July 30, 1948.

Mr. John D. Pearson,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Mr. Pearson:

I have your letter requesting an opinion relative to the licensing of insurance agents which outlines the problem as follows:

“A certain insurance company with ten affiliates or connectives known as a group now purposes to merge all ten affiliates into the one parent company, sub-