

OFFICIAL OPINION NO. 64

October 21, 1947.

Indiana State Board of Registration
for Professional Engineers and Surveyors,
330 State House,
Indianapolis, Indiana.

Gentlemen:

You have submitted the following questions:

1. Does the use of the title "Engineer" or "Engineering" without the use of a descriptive adjective or adjectives by a person not registered, firm, co-partnership or corporation constitute a violation of the provisions of the Act when such a person, firm, co-partnership, or corporation is not engaged in the practice of professional engineering? To illustrate: John Doe, Engineer; Doe Engineering; The Doe Engineering Co., etc.

2. Is it a violation of the provisions of said Act for a person who is not registered, a firm, co-partnership or corporation that does not employ registered engineers to use the title "engineer" or "engineering" with a descriptive adjective or adjectives, such as: Radio Engineering; Plumbing Engineer; Sound Engineering, Inc., etc.?

3. In legal procedure for criminal prosecution of a person for the illegal practice or offer to practice professional engineering filed with the County Prosecutor, is the Board authorized to file the charges or does the law require that charges be filed by a resident of the County in which the alleged violations have been committed?

You have also submitted certain newspaper advertisements and correspondence.

Section 2 (c) (Burns', Section 63-1518), as amended in 1947, defines professional engineering as follows:

"(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 design, 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."

I wish to point out that the term "Engineer" or "Engineering" is not defined by the act. Nor is engineering generally regulated by the act, but it regulates and requires a license only for a "Professional engineer" or "Land surveyor."

Section 1 of the act (Burns' 63-1517) is as follows:

"For the purpose of safeguarding life, health, and property no person shall engage in, or offer to engage in, the practice of professional engineering or of land surveying in this state, unless and until such person shall submit evidence that he is qualified so to practice and shall have been registered, or is exempted as hereinafter provided. It shall be unlawful for any person to engage in, or offer to engage in, the practice of professional engineering or of land surveying in this state, or to use, in connection with his name, or otherwise assume, or advertise, any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such person

shall have been duly registered or is exempted under the provisions of this act.”

Thus it is seen that it is only the “practice of professional engineering or of land surveying,” as defined in the act, which is prohibited unless duly registered or exempted.

1. The use of the title “Engineer” or “Engineering” alone without any representation that he is a “professional engineer” or holding out as able to or as performing “professional engineering” service, as defined in the act, is not a violation of the act. In this connection I call your attention to the fact that the title of this act is limited to the “Practices of Professional Engineering and Land Surveying” and does not include any and all types of engineering.

In my opinion the question as to whether a person is engaged in the practice of “professional engineering” is to be determined from the facts in each particular instance. The same is true as to whether a person is holding himself out, advertising or representing himself to be a professional engineer. An example of the clippings enclosed with your letter are as follows:

“RADIO
* SERVICE*
Expert Repairs on all
Makes of Radios
Sound Equipment for Rent or Sale
DOE ENGINEERING
Open Monday Thru Saturday”

Another example is:

“Does Your Radio Limp?
Bring It In We Have the
Parts to Repair It—
DOE
Radio Engineering Co.”

In the above examples we have substituted the name “Doe” for the name in the actual clipping.

I do not believe that a person whose business is the repair of radios is required to qualify as a professional engineer

under the act. It is further my opinion that the particular advertisements in question show that the person in question is only holding himself out to perform the service of radio repair and the fact that the advertisement includes the word "engineering" would not mislead anyone into believing that such person was holding himself out to be a professional engineer or as able to perform the work of a professional engineer as defined in the act. However, as above pointed out, this is a question to be determined under the facts and circumstances of each particular case.

2. What has been said answers your second question.

3. Section 27 of the act, as amended by Chapter 262 of the 1947 Acts, is as follows:

"Any person who shall engage in, or offer to engage in, the practice of professional engineering or land surveying in this state, without being registered or exempted, under the laws of this state, or any person who shall present or attempt to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired, suspended or revoked certificate of registration, or any person who shall violate any of the other provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine or not less than one hundred dollars, nor more than five hundred dollars, or suffer imprisonment for a period not exceeding three months, or both, in the discretion of the court."

Section 28 of the act (Burns' 63-1544) is as follows:

"It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act, and to apprehend and prosecute any person who shall violate any of the provisions thereof. The attorney general shall act as the legal advisor of the Board and shall

render such legal assistance as may be necessary in carrying out the provisions of this act."

Section 7 of the act (Burns' 63-1523) is as follows:

"The Board shall enforce and administer the provisions of this act, to (and) make such rules, not inconsistent with the constitution and laws of this state, as may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The Board shall adopt and have an official seal."

In answer to your third question, the law does not require that the charges be filed by a resident of the county in which the alleged violations have been committed. A proper, but not exclusive, procedure would be for the Board or its representatives to call an alleged violation to the attention of the proper prosecuting attorney where it is thought criminal prosecution should be commenced.

OFFICIAL OPINION NO. 65

October 28, 1947.

Mr. C. E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you request an official opinion on the following questions:

"1. Is the judge of a circuit court or superior court authorized by law to appoint an assistant prosecutor to assist the regular prosecutor in the performance of his statutory duty?

"2. If your answer is in the affirmative, can such assistant prosecutor be compensated on order of the court without a pre-existing appropriation?