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OFFICIAL OPINION NO. 38

December 20, 1971

Mr. Robert McMurray, Secretary
Indiana State Board of Registration
for Professional Engineers and
Land Surveyors
1007 State Office Building
Indianapolis, Indiana 46204

Dear Mr. McMurray:

This is in response to your request for an Official Opinion on the following question:

“Does advertising in newspapers, using terms such as ‘Design and Engineering’ or ‘Contracting and Engineering’ by a business which does not have a registered professional engineer in its employ constitute an offer to practice engineering in violation of Section 1, Acts of 1935, Ch. 148, as amended in the Acts of 1965, Ch. 284 (Burns 63-1517) and Section 2(k) Acts of 1935, Ch. 148 as amended in the Acts of 1969, Ch. 279 (Burns 63-1517) IC 1971-25-31-1-1 and 25-31-1-1(k)?”

ANALYSIS

The pertinent statutes are to be found in Burns' (1970 Supp.), Sections 63-1517 and 63-1518(k) and read as follows:

“For the purpose of safeguarding life, health, and property no person shall engage in, or offer to engage in the practice of engineering or 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 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 an

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engineer or a land surveyor, unless such person shall have been duly registered or is exempted under the provisions of this act" [Acts 1935, ch. 148, § 1, p. 510; 1947, ch. 262, § 1, p. 1055; 1965, ch. 248, § 1, p. 779.]

"The term 'practice or offer to practice engineering or land surveying' within the meaning and intent of this act, shall apply to any person who by verbal claim, sign, advertisement, letterhead, card, telephone listing, or in any other way represents himself to be a professional engineer or land surveyor; or who performs, or offers to perform, any acts or work involving the practice of engineering or land surveying." [Acts 1935, ch. 148, § 2, p. 510; 1947, ch. 262, § 2, p. 1055; 1957, ch. 320, § 1, p. 949; 1961, ch. 277, § 1, p. 624; 1965, ch. 284, § 2, p. 779; 1969, ch. 279, § 1, p. 1156.]

There are no Indiana cases involving professional engineers and land surveyors giving us holdings on such matters as this question; however, there are Supreme Court cases in other state jurisdictions where there are similar statutes involved. In the case of the State Board of Examiners of Architects and Engineers v. Standard Engineering Co. 7 S. W. (2d) 47, plumbers were operating under the name of an engineering company and were using letterheads indicating they were engineers whereas the statutes regulating the practice of engineering said the use of sign, order, letterheads or cards constituted an offer to practice engineering. The court held at p. 49 as follows:

"While it is doubtless true that the defendants have not undertaken to practice architecture or engineering, strictly speaking, and they might pursue their business, as they have in the past, without endangering the public safety or welfare, nevertheless they have seen proper to advertise themselves as engineers. This is prohibited by law unless they are in fact engineers. It is not to be controverted that acts, innocent in themselves, may, to prevent fraud and deception, be forbidden. The Legislature, having the power to regulate the practice of architecture and en-

gineering in the interest of the public safety, may deny to all except those qualified the right to advertise as architects or engineers. Those who invite the confidence of the public upon the theory that they are architects or engineers may be compelled to submit to such regulations as will guard the public against misapprehension. *State v. Mill Co.*, 123 Tenn. 399, 131 S. W. 867, Ann. Cas. 1912C, 248; *Kirk v. State*, 126 Tenn. 150 S. W. 83 Ann. Cas. 1913D, 1239; *Purity Extract Co. v. Lynch*, 225 U.S. 192, 33 S. Ct. 44, 57 L. Ed. 184.”

In the case of *Payne v. DeVaughn et al*, 246 P. 1069, Payne, who was a construction man, held himself out as an architect and drafted plans for a building which was subsequently erected for DeVaughn and others. When defendants learned that Payne was not a registered engineer, they refused to pay for his services in the construction. Payne then sued and the California Court hearing the appeal in the matter decided that DeVaughn and the others did not have to honor the contract by reason of the fact that Payne was illegally attempting to practice architecture, he not being a registrant. The court said:

“It has frequently been held that a statute or ordinance requiring the payment of a license and procurement of a certificate to perform the services of an insurance agent, attorney, contractor and builder, freight solicitor, insurance broker, peddler, architect, plumber, real estate agent or stock breeder, is not to be construed as a revenue law alone, but as a police measure, for the protection of the public, and that a contract of an unlicensed person for the furnishing of such services will not be upheld.”

CONCLUSION

It is, therefore, my official opinion that a person who is not registered as a professional engineer does not have the right to advertise himself as an authorized practitioner of the field of professional engineering as would be indicated by the advertised use of such terms “design and engineering” and “construction and engineering.”