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STATE OF NEBRASKA
OFFICIAL
JUN 22 1992
DEPT. OF JUSTICE

DATE: June 17, 1992

SUBJECT: Review of Telephone Directory Advertisements Before Publication in Order to Enforce Neb. Rev. Stat. §§ 81-839 and 81-852 (Reissue 1987)

REQUESTED BY: Charles G. Nelson, Executive Director
State Board of Examiners for Professional Engineers and Architects

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

In Attorney General Opinion #87007 (Jan. 16, 1987), we stated:

> It would appear that anyone who would advertise in a telephone directory or other directory under the heading of engineer or architect is offering to practice the profession of architecture and unless said person was registered pursuant to Neb. Rev. Stat. § 81-847 (Reissue 1981) that individual would be in violation of the law.
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> . . . [A]nyone who is not a properly registered engineer or architect or who is not exempt under the statutes and who willingly places his name in a public directory of any sort offering services as an engineer or architect, either as an individual or as part of a firm or corporation, would be in violation of the statutes relating to registered engineers and architects and would be subject to the penalties of § 81-852 (1986 Cum. Supp.).

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This opinion was largely based on Neb. Rev. Stat. §§ 81-839 and 81-852 (Reissue 1981 & Cum. Supp. 1986), which are identical to the current version of §§ 81-839 and 81-852 (Reissue 1987). Section 81-839 provides that "[i]t shall be unlawful for any person to practice or offer to practice the profession of engineering or architecture in this state, unless such person has been duly registered, or is exempted under the provisions of section 81-853." Section 81-852 states that "[a]ny person who shall practice, or offer to practice, the profession of engineering or architecture in this state, without being registered or exempted . . . shall be deemed guilty of a Class III misdemeanor."

In your letter to this office, you stated that the Board of Examiners for Professional Engineers and Architects desires to eliminate telephone directory advertising that would violate the above statutes before the advertising actually appears in the directory. To accomplish this, you would like to review telephone directory advertisements before publication. You have asked whether the Board is entitled to make a pre-publication review of these advertisements. We conclude that you are not entitled to such a review.

Neb. Rev. Stat. §§ 81-839 to 81-856 (Reissue 1987) grant to the Board the authority to regulate the practice of registered professional engineers and architects. This regulatory power includes issuing, suspending, and revoking certificates of registration, as well as establishing a professional code of practice. The Board's statutory authority does not extend to enforcement efforts related to §§ 81-839 and 81-852 against persons engaging in unlicensed practice or unlicensed persons making offers to practice; any such enforcement activities should be initiated by the county attorney. Therefore, insisting on access to the telephone company's proofs of advertisements not yet published for the purposes of enforcing §§ 81-839 and 81-852 would not seem to be directly within the Board's regulatory or enforcement powers. Aside from the issue of the Board's authority to request access to the telephone company's pre-publication proofs for the purposes you have mentioned, we were unable to locate any Nebraska statutes that would require the telephone company to grant the Board such access.

Therefore, we conclude that unless the telephone company voluntarily agrees to allow the Board access to its advertising proofs, the Board is not legally entitled to a pre-publication review of telephone directory advertisements in order to enforce §§ 81-839 and 81-852.

Sincerely,

DON STENBERG
Attorney General

Jan E. Rempe

Jan E. Rempe
Assistant Attorney General

Approved By:

Attorney General

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