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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 7 1993
DEPT. OF JUSTICE

DATE: October 4, 1993

SUBJECT: Authority of State Board of Examiners for Professional Engineers and Architects to Restrict Use of Titles by Unlicensed Persons

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

You have inquired about a 1993 amendment to Neb. Rev. Stat. § 81-839 (1987) which makes it unlawful for any "person to use the title professional engineer or architect" unless such person is registered as such under Neb. Rev. Stat. §§ 81-839 to 81-856 (1987 & 1993 Neb. Laws) or is exempt from registration requirements. 1993 Neb. Laws LB 690, § 1. You have asked whether this language gives the State Board of Examiners for Professional Engineers and Architects (Board) the authority to restrict persons who are not registered as professional engineers or professional architects from using as a title all variations of the terms "engineer" and "architect."

Before addressing your specific questions below, we note as a preliminary matter that the Board does not have direct authority to restrict unlicensed persons from using as titles various architectural and engineering terms. Since Neb. Rev. Stat. § 81-852 (1987) makes it a criminal offense to violate the language at issue, enforcement and prosecution would be a matter for the relevant county attorney, not the Board.

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We also note that your opinion request addresses use of all variations of "engineer" and "architect," as well as terms such as "professional engineer" and "professional architect." However, the plain language of the amendment to section 81-839 indicates that only the titles "professional engineer" and "architect" can be restricted. *See* Committee Statement on LB 690, 93d Legis., 1st Sess. (Mar. 24, 1993) ("LB 690 amends provisions to prohibit any person from using the title 'professional engineer' or 'architect' unless properly registered as such").[1] Therefore, this opinion applies only to use of the titles "professional engineer" and "architect," as well as their grammatical extensions, such as "professional engineers," "professional engineering," and "architects."

1. Does the Board have the authority to restrict the use of these terms when used by unlicensed individuals in association with their names?

Yes, the Board could refer to the proper county attorney an unlicensed individual who used either "professional engineer" or "architect" in association with his or her name (i.e., Jane Doe, Professional Engineer; John Doe, Architect).

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[1] Nebraska's statute is not written broadly enough to allow restriction of all terms which imply that one is an architect or engineer. For example, some statutes make it unlawful to use in connection with one's name, or otherwise to assume, use, or advertise any title or description tending to convey the impression that one is an architect or professional engineer if not properly registered as such. See the statutes cited in ***McWhorter v. State Bd. of Registration for Prof. Eng'rs and Land Surveyors v. International Business Machines Corp.***, 359 So. 2d 769 (Ala. 1978); ***People v. Babcock***, 343 Mich. 671, 73 N.W.2d 552 (1955); ***Scott-Daniels Properties, Inc. v. Dresser***, 281 Minn. 179, 160 N.W.2d 675 (1968); ***North Carolina State Bd. of Registration for Prof. Eng'rs and Land Surveyors v. International Business Machines Corp.***, 31 N.C. App. 599, 230 S.E.2d 552 (1976); ***State v. T.V. Eng'rs of Kenosha, Inc.***, 30 Wis. 2d 434, 141 N.W.2d 235 (1966). Other statutes make it a criminal offense to use any title, including the word "engineer" or words of like import, to imply that one is a professional engineer when not so registered. ***T.V. Eng'rs, Inc. v. District of Columbia***, 166 A.2d 920 (D.C. 1961). Still other statutes refer to use of the word "engineer," alone or preceded by any word, or use of any word or words, letters, figures, degrees, titles, or other descriptions indicating or implying that one is a professional engineer or is willing or able to practice engineering. ***Missouri Bd. for Architects, Prof. Eng'rs and Land Surveyors v. Earth Resources Engineering, Inc.***, 820 S.W.2d 505 (Mo. Ct. App. 1991).

2. Does the Board have the authority to restrict the use of these terms when used in the name of a business organization which does not offer the services of an engineer or architect registered to practice these professions in Nebraska?

LB 690, section 1, makes it unlawful for any "person" to use the titles "professional engineer" or "architect" unless registered as such or exempt from registration requirements. Although "person" is not defined in sections 81-839 to 81-856, Neb. Rev. Stat. § 49-801(16) (1993 Neb. Laws LB 121, § 303) states that "person," as used in the Nebraska statutes, includes "bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations."

Therefore, the Board can refer to the proper county attorney any business organization listed in section 49-801(16) that uses "professional engineer" or "architect," or grammatical extensions thereof, in its name when such organization does not offer the services of a professional engineer or professional architect (i.e., Doe Professional Engineering; Doe Architects). ***See T.V. Eng'rs, Inc. v. District of Columbia***, 166 A.2d 920 (D.C. 1961) (even though only natural persons can be registered as professional engineers, corporations can also be guilty of violating the Professional Engineers' Registration Act; otherwise, persons could avoid being penalized for posing as professional engineers when not so registered simply by incorporating). ***See also*** Neb. Rev. Stat. § 81-854 (1993 Neb. Laws LB 121, § 528) (various business organizations can engage in professional engineering and architecture when such practice is carried on by registered persons).

3. Does the Board have the authority to restrict the use of these terms when used in the job title of an unlicensed individual, i.e. Financial Engineer or Engineering Associate?

As stated above, LB 690 refers only to the title "professional engineer," not "engineer" alone. Many jurisdictions have concluded that "engineer" and "professional engineer" are not synonymous and have declared statutes similar to the one at issue inapplicable to ordinary and common uses of the words "engineer" and "engineering." ***McWhorter v. State Bd. of Registration for Prof. Eng'rs and Land Surveyors***, 359 So. 2d 769 (Ala. 1978) (as commonly understood, "engineer" and "professional engineer" are not synonymous); ***Missouri Bd. for Architects, Prof. Eng'rs and Land Surveyors v. Earth Resources Engineering, Inc.***, 820 S.W.2d 505 (Mo. Ct. App. 1991) ("engineering" is a generic term encompassing many forms of human activity not classified as "professional engineering"); ***North Carolina State Bd. of Registration for Prof. Eng'rs and Land Surveyors v. International Business Machines Corp.***, 31 N.C. App.

599, 230 S.E.2d 552 (1976) (similar statute did not apply to ordinary and common uses of "engineer" and "engineering," such as "customer engineer"; court could not imagine that the state legislature would grant such extensive control over the English language to a board of engineers); ***State v. T.V. Eng'rs of Kenosha, Inc.***, 30 Wis. 2d 434, 141 N.W.2d 235 (1966) ("engineer" describes persons of various levels of learning and skills, while "professional engineer" refers to persons with a high degree of experience, learning, and competence in mathematics, physics, and chemistry).

Therefore, the Board does not have the authority to restrict use of the term "engineer" in job titles such as "financial engineer" or "engineering associate." Our conclusion is confirmed by an exchange between Senator Crosby, introducer of LB 690, and Senator Withem during floor debate on LB 690:

> SENATOR WITHEM: . . . It is not your intent to stop anybody that has the term engineer some place [sic] within their title, it's specifically <u>professional engineer</u> is the term that you are concerned with here?
>
> SENATOR CROSBY: Right.

<u>Floor Debate on LB 690</u>, 93d Legis., 1st Sess. 2952 (Apr. 8, 1993) (emphasis added).

The same reasoning would apply to use of the word "architect" in a job title such as "golf course architect." ***Jackling v. Snyder***, 3 Ariz. App. 63, 411 P.2d 822 (1966) (use of title "golf course architect" on business card did not imply that person was a registered architect under state statute).

Sincerely,

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Attorney General

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Approved By:

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13-406-6.93D