

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

June 30, 1982

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STATE OF NEBRASKA
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DEPT. OF JUSTICE

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SUBJECT: Board of Examiners for Professional Engineers and Architects; Basis for Discipline under Neb.Rev.Stat. §81-850 (Reissue 1976).

REQUESTED BY: Arthur Duerschner, Executive Director, Nebraska State Board of Examiners for Professional Engineers and Architects

OPINION BY: Paul L. Douglas, Attorney General, J. Kirk Brown, Assistant Attorney General

QUESTION: May a person holding a certification of registration issued pursuant to Neb.Rev.Stat. §81-839, et seq. (Reissue 1976) have his certificate of registration suspended or revoked pursuant to Neb.Rev.Stat. §81-850 (Reissue 1976) for conduct which does not fall within the definition of the phrase "the practice of engineering or architecture" as defined in Neb.Rev.Stat. §81-840 (Reissue 1976).

ANSWER: No.

Neb.Rev.Stat. §81-850 (Reissue 1976) states, in part, as follows:

The Board of Examiners for Professional Engineers and Architects shall suspend or revoke the certificate of any engineer or architect who is found guilty of deceit in obtaining a certificate, or of any fraud, gross negligence, incompetency, or misconduct in the practice of engineering or architecture as defined in section 81-840.

Neb.Rev.Stat. §85-840 (Reissue 1976) defines the "practice of engineering" as follows:

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The practice of professional engineering within the meaning and intent of said sections includes any professional service, such as consultation, investigation, evaluation, planning, design or responsible supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and data. The practice of professional engineering does not include the services ordinarily performed by those commonly designated as locomotive, stationary and marine engineers, or power plant engineers, or manufacturers who supervise the operation of, or who operate machinery or equipment, or who supervise construction within their own plant.

The "practice of architecture" is defined by §81-840 as follows:

Any one or combination of the following practices shall constitute the practice of architecture: Consultation, investigation, evaluation, except real estate appraisals, planning, designing or supervision of the construction and erection, enlargement or alteration of any building or buildings, or of any appurtenances thereto, to be constructed for others. A building is any structure consisting of foundation, floors, walls columns, girders and roof, or a combination of any number of parts, with or without their parts or appurtenances.

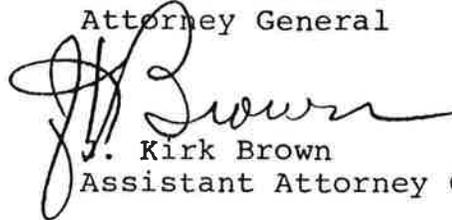
The question presented is whether a person holding a certificate of registration as a professional engineer or architect under §81-850 may be disciplined for misconduct occurring beyond the scope of his profession. We must conclude that the Board of Examiners for Professional Engineers and Architects does not presently possess that authority. We reach this conclusion recognizing that the legislation establishing the Board is to be liberally construed (Neb.Rev.Stat. §81-856 (Reissue 1976)) and that the same misconduct which might well disqualify an applicant from receiving a certificate of registration in the first instance would not necessarily form the basis for disciplinary action once that certificate has

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been issued. Neb.Rev.Stat. §81-848 (Reissue 1976). However, the language of §81-850 compels us to conclude the Board may not discipline a registrant for conduct occurring beyond the scope of his profession as defined by §81-840.

Very truly yours,

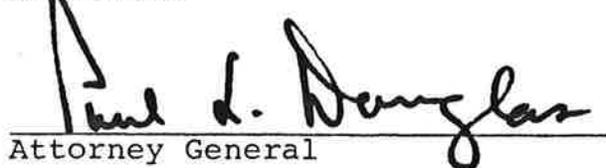
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APPROVED:



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