



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 14, 1977

ATTORNEY GENERAL OPINION NO. 77-127

Mrs. Charlotte Olander
Executive Secretary
Kansas State Board of Technical Professions
Suite 1105, 535 Kansas Avenue
Topeka, Kansas 66603

RE: Professional Engineers' License Act--Definitions--
Unlawful Acts

Synopsis: K.S.A. 1976 Supp. 26a-121 provides that it is unlawful for a person not licensed under the Act to practice or offer to practice professional engineering in Kansas. Design of chemical process systems, if performed within this state by one not licensed by this state, violates the statute, regardless of the location of the plant facilities ultimately constructed.

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Dear Mrs. Olander:

You have requested an opinion on whether an individual, not licensed to practice engineering in Kansas, who performs design work, consultation, etc. in the state of Kansas on projects to be constructed outside the state is in violation of K.S.A. 26a-121.

K.S.A. 1976 Supp. 26a-121 provides that it is unlawful for any person to:

"practice, or offer to practice professional engineering in the state of Kansas without being licensed in accordance with the provisions of this act, or the act which is supplementary hereto...."

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K.S.A. 1976 Supp. 26a-102(c) defines "practice of engineering" as follows:

"The term 'practice of engineering,' within the intent of this act, shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering surveys and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering...."

It also identifies situations in which a person will be construed to practice engineering:

"A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this act, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer, or through the use of some other title implies that he or she is an engineer or that he or she is registered under this act; or who holds himself or herself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering. The provisions of this act shall not apply to or interfere with those persons and practices set forth in K.S.A. 26a-122."

It appears that a person who "practices any branch of the profession of engineering" or "perform[s] any engineering service or work or any other service...which is recognized as engineering" shall be construed to practice engineering. Furthermore, design services and consultation requiring engineering education and

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experience, in connection with any structures or buildings, would constitute the "practice of engineering" within the definition in K.S.A. 1976 Supp. 26a-102(c). There is no indication in the statutory definitions that the building in connection with which such design work and consultation is performed must be constructed in Kansas in order for the design and consultation work to take place in Kansas. To the contrary, it is quite possible for an engineer to perform extensive design and consultation work within the state of Kansas, for a structure to be constructed half-way around the world. The place where the design work, analysis, and evaluation is done, by which the engineer assists in the building project, wherever its location, is the crucial factor. The engineer could provide such services prior to construction and perhaps never see the resulting structure.

The specific individual whose activities prompted the request for this opinion has admitted that his work is performed in Kansas, but maintains that because the physical plants ultimately constructed are not located in Kansas, he is not in violation of Kansas law. That contention is irrelevant.

This individual also maintains that the work performed by him in Kansas is predominantly consulting and process design for the chemical process industry. However, K.S.A. 1976 Supp. 26a-102(c) includes consultation on or planning and design of engineering systems or processes within the term "practice of engineering". Thus, design of chemical process systems falls within the definition and is a practice which cannot be performed in Kansas by an engineer who is not licensed by this state.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/ERH/cgm