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AG 93-157

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OFFICE OF THE
2ND FLOOR, KANSAS JU

AGD 80-91
withdrawn

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 28, 1980

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ATTORNEY GENERAL OPINION NO. 80-235

Ms. Jean A. Martin
Executive Secretary
Kansas State Board of Technical Professions
Suite 1105, 535 Kansas Avenue
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--State
Board of Technical Professions--Practice of
Technical Professions

Synopsis: Even though facilities constructed by a corporation,
including "bodies politic and corporate," are to be
used by the general public, in-house professional
services performed in connection therewith by employees
of such corporation are performed "solely for the
benefit of the corporation." Under these circumstances,
such corporations and bodies politic and corporate
are exempt from the registration requirements of the
Technical Professions Act, as prescribed by Section 1(d)
of Chapter 244 of the 1980 Session Laws. Cited herein:
K.S.A. 1979 Supp. 74-7035 and L. 1980, ch. 244, §1.

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Dear Ms. Martin:

You request the opinion of this office as to whether the provisions
of 1980 House Bill No. 3269 [L. 1980, ch. 244] require general
corporations and "bodies politic and corporate" that employ in-
house professional services in connection with the construction
of facilities which are used by the general public, to register
pursuant to the provisions of the Act. Since the Act does not
distinguish between types of corporations, we shall consider the
application of this bill to the respective types of corporations
(general and bodies politic) as one question.

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The act, as passed by the 1980 Legislature, requires those corporations which desire to practice technical professions to be certified by the Kansas Board of Technical Professions. However, section 1(d) of this act provides an exemption. It states in pertinent part:

"The requirements of this section shall not affect a corporation and its employees in performing services included within the term 'technical professions' solely for the benefit of such corporation or subsidiary or affiliated corporations."

The essential consideration thus becomes the characterization of the services being offered; if said services are solely for the benefit of the corporation the requirements of this new law are not applicable.

The Kansas Board of Technical Professions was established to license and monitor the activities of those technical professionals who offer their services to the public. A similar provision to that of section 1(d) of the new law is found in K.S.A. 1979 Supp. 74-7035(d), which provides that the provisions of the Technical Professions Act shall not apply to "the practice of persons who are employees of any person, firm or corporation who do not offer to the public their services in the technical professions as herein defined"

In comparing these provisions, we are of the opinion that the phrase "solely for the benefit of such corporation" was meant to exempt the same type of activity that is exempted in K.S.A. 1979 Supp. 74-7035(d). In this regard Attorney General Opinion No. 80-91 should be noted. Therein we concluded that persons employed by the Kansas State Park and Resources Authority who do not offer engineering services to the public were not subject to the licensing requirements of K.S.A. 1979 Supp. 74-7001 et seq.

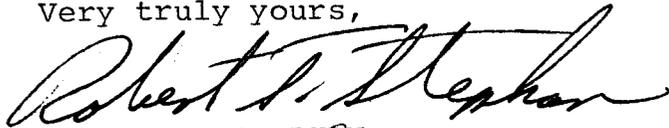
In our judgment, the professional services in question are performed solely for the corporate entity. We are unable to characterize the performance of these in-house services as the offering of services to the public merely because members of the general public may set foot in or near the facilities constructed by the corporation. Such does not constitute the offering of services to the public, nor does it establish such services as having been performed for persons other than the corporate entity.

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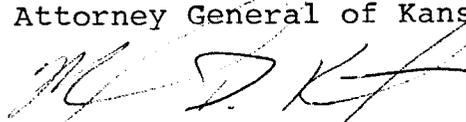
Your concern for the public welfare is laudatory; however, the law provides generally for the protection of the public by extending tort liability to the corporation where negligence of its employees results in injury to the public.

Thus, it is our opinion that even though facilities constructed by a corporation, including "bodies politic and corporate," are to be used by the general public, in-house professional services performed in connection therewith by employees of such corporation are performed "solely for the benefit of the corporation." Under these circumstances, such corporations and bodies politic and corporate are exempt from the registration requirements of the Technical Professions Act, as prescribed by Section 1(d) of Chapter 244 of the 1980 Session Laws.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Michael D. Kracht
Assistant Attorney General

RTS:BJS:MDK:jm