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ATTORNEY GENERAL OPINION NO. 88- 32

The Honorable Jack E. Beauchamp
State Representative, Fourteenth District
State Capitol, Room 174-W
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities--State
Board of Technical Professions--Land Surveyors;
Qualifications for Licensure; Examination
Requirement, Certain Exemption

Synopsis: The land surveyors' licensing statute, K.S.A. 1987
Supp. 74-2044, is constitutional as a valid
exercise of the police powers of the state. The
exemption from examination found in subsection (b)
of this statute is within the discretion of the
governing body and evidences an attempt to not
unduly burden engineers currently practicing land
surveying under their engineering license.

In addition, unless mandated by statute, the Board
of Technical Professions, as the administrative
agency, is under no obligation to provide notice of
statutory changes to those affected by the
legislation. Cited herein: K.S.A. 1987 Supp.
74-7022, K.S.A. 74-7034 (Ensley 1985), Kan.
Const., Art. 2, §18.

* * *

Dear Representative Beauchamp:

As State Representative for the Fourteenth District you
inquire about the constitutionality of K.S.A. 1987 Supp.

74-7022 dealing with the licensing of land surveyors. Specifically you inquire about the constitutionality of subsection (b) as passed by the legislature and as administered by the Board of Technical Professions (Board) that exempts some engineers from the examination process for one year. Even if the statute is constitutional, you question whether the Board erred in not providing notice of the statutory change to engineers currently practicing.

As amended in 1986 the land surveyor's licensing statute, K.S.A. 1987 Supp. 74-7022, allowed professional engineers who were licensed in the State of Kansas prior to January 1, 1986 and who for 2 years had responsible charge of land surveying work, to apply for a land surveyor's license upon payment of an application fee, thus exempting these engineers from the examination process. [Prior to this time, licensed engineers were allowed to practice land surveying without a land surveyor license under K.S.A. 74-7034 (Ensley 1985). See 1986 Kansas Session Laws, ch. 303, sec. 1.] The legislature however, placed a one year limitation on the exemption from examination. Hence any engineer not making application by July 1, 1987 cannot utilize the exemption. Upon expiration of the exemption an engineer must fulfill all the requirements and take the examination in order to be licensed as a land surveyor.

It is fundamental that, under its police power, the State may require a license for the privilege of pursuing a vocation or business. 53 C.J.S. Licenses §5 (1987). While the governing body does not possess plenary power to pass legislation that is arbitrary, oppressive or so capricious that it has no reasonable basis, Delight Wholesale Co. v. City of Prairie Village, 208 Kan. 246, 249 (1971), the State's inherent police power provides broad discretion to determine what is deleterious to health, morals or is contrary to public welfare. State ex rel., Stephan v. Lane, 228 Kan. 379, 392 (1980).

Describing the police power of the state the Kansas Supreme Court in Lane, supra states:

"To justify the State's assertion of its authority in behalf of the public, it must appear that the interests of the public require such interference; that the means are reasonably necessary for the accomplishments of the purpose, and not unduly oppressive upon individuals.

Debatable questions as to reasonableness
are not for the courts but for the
legislature. Goldblatt v.
Hempstead, 369 U.S. 590, 8 L.Ed.2d 130,
82 S.Ct. 987 (1962)." (Emphasis added.)
228 Kan. at 392.

Hence a state's power is broad enough to constitutionally interfere with the practice of land surveying by requiring licensure. Furthermore, the above-underscored language clearly indicates that the question of whether the means reasonably accomplish the desired protection is not for the courts but for the legislature in their exercise of the broad regulatory power.

Regulation under the state's police power can also constitutionally affect those already in business. The reasonable regulation of a business under the police power, that is effective immediately on all persons engaged in such business, is not an invasion of the constitutional rights of persons already in such business. 123 A.L.R. 1207 (1939). Given that there is no question that the state may constitutionally impose licensing restrictions on persons desiring to practice land surveying as well as on those currently practicing a profession, there can be no merit to any constitutional challenge against the exemption. The exemption is within the legislature's discretion and evidences an attempt to not unduly oppress individuals currently practicing land surveying. Accordingly, it is our opinion that K.S.A. 74-7022 is not subject to constitutional challenge as an invalid exercise of the state's police power, and furthermore that the exemption from examination found in subsection (b) of this statute reasonably accomplishes an attempt to not unduly burden those practicing land surveying under an engineering license.

We address now your second question, whether the Board of Technical Professions erred in not providing notice of the statutory changes to engineers engaged in the practice of land surveying at the time of the amendment. Initially we note that the Kansas Constitution, Art. 2, §18 requires that acts be published. K.S.A. 1987 Supp. 74-7022 was published in the 1986 Kansas Session Laws thereby meeting the constitutional requirement that provides legal notice of statutory change.

Administrative agencies have no common law powers or duties. They derive their powers and duties from legislative enactment. 1 Am. Jur. 2d Administrative Law §70. Hence,

the Board of Technical Professions as an administrative agency has no obligation to give notice of statutory changes unless directed to do so by the legislature. There is no directive in K.S.A. 1987 Supp. 74-7022 and therefore it is our opinion that the Board of Technical Professions did not err.

In conclusion, it is our opinion that K.S.A. 1987 Supp. 74-2044 is constitutional as a valid exercise of the police powers of the state and that the exemption found in subsection (b) is within the discretion of the governing body and reasonably accomplishes the need to not unduly burden those currently practicing land surveying under an engineering degree. In addition, it is our opinion that unless mandated by statute, the Board of Technical Professions has no obligation to provide notice of statutory changes to those affected by the legislation.

Very truly yours,



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