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ATTORNEY GENERAL OPINION NO. 90- 135

Ms. Nancy Macy, Chairperson
Kansas State Board of Technical Professions
Suite 507
Landon State Office Building
900 Jackson Street
Topeka, Kansas 66612-1214

Re: State Boards, Commissions and Authorities--State Board of Technical Professions--Exemptions from Examination for Licensure; Reciprocity; Certain License or Certificate Holders; Fees; Conditions

Synopsis: The Kansas state board of technical profession's policy, requiring that an applicant for licensure by reciprocity have a current license in the state of original examination is enforceable as a reasonable measure with which to carry out its legislative mandate. Cited herein: K.S.A. 74-7024.

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Dear Ms. Macy:

As chairman of the Kansas board of technical professions (hereinafter Board) you inquire whether the Board can enforce their policy that interprets K.S.A. 74-7024 a statute dealing with exemptions from examination for licensure.

K.S.A. 74-7024 states:

"[A]ny person who holds a current license . . . to practice any branch of

the technical professions issued by the proper authority in any other state . . . may be exempted from examination for licensure in this state if the requirements under which said license . . . was issued are of a standard accepted by the Board and if the person's record fully meets the requirements of this state in all respects other than examination."

The Board construes this provision to mean that an applicant must have a current license in good standing in the state of the applicant's original examination. The Board will thus not grant a license based on a current license that was granted by reciprocity since no standard was utilized in the granting of the license other than a determination that an applicant had at that time a current license from his original examination state. Additionally you indicate that many state boards will not provide original licensure information if an applicant's license is not kept current, thus making the Board unable to review the original licensing standards.

The issue presented is not whether the Board will grant or deny a license, but rather whether the applicant for licensure will be required to take an examination to determine his competence to practice a licensed technical profession in this state. In lieu of taking an examination the applicant for licensure by reciprocity must prove that he has met the Kansas standard of competence by having the standards of the original licensure state compared to the standards required by the state of Kansas. Additionally an applicant's record must fully meet the requirements of this state in all respects other than examination.

Thus, these statutory requirements make the question of licensure by reciprocity a fact question to be decided on a case by case basis. The Board has promulgated the policy in question to deal with each case. See 2 Am.Jur.2d § 299 Administrative Law (1962). The policy enables the Board to obtain the information necessary to carry out the legislative mandate requiring comparison of licensure standards and a determination that the applicant's record fully meets the requirements of this state. If this information is unavailable because licensure has not been kept current, the board would be unable to fulfill the statutory mandate. The mandates obviously require the use of discretion in individual cases, obviating the need to promulgate the

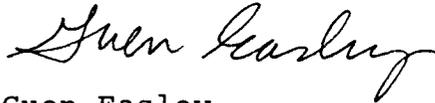
regulation in order to be enforceable. See Attorney General Opinion No. 89-114 and 89-134 discussing when a policy statement cannot be enforced because it is not promulgated as a regulation.

In conclusion, it is our opinion that the Board's policy, requiring that an applicant for licensure by reciprocity have a current license in the state of original examination, is enforceable as a reasonable measure with which to carry out its legislative mandate.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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