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June 11, 1979

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ATTORNEY GENERAL OPINION NO. 79-111

Charlotte Olander, 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--Provision
of Professional Services by Nonprofessional
Corporations--Use of Word Engineer in Connection
with Name of a Person

Synopsis: The operation of K.S.A. 1978 Supp. 74-7001 et seq., the Board of Technical Professions Act, and K.S.A. 1978 Supp. 17-2706 et seq., the Professional Corporations Act, serve to authorize the performance of professional services such as engineering, land surveying, architecture and landscape architecture, by only those persons who are licensed pursuant to K.S.A. 1978 Supp. 74-7001 and by professional corporations, composed of such persons, and incorporated pursuant to K.S.A. 1978 Supp. 17-2706 et seq. Unlicensed persons and nonprofessional corporations may neither offer to perform professional services nor may they hold themselves out as being legally authorized to perform such services (K.S.A. 1978 Supp. 70-7029). However, the statutes do permit certain unlicensed persons in specific relationships with their employer or with a licensed professional, to perform limited professional services so long as such services are rendered in a manner consistent with the exceptions set out in K.S.A. 1978 Supp. 74-7033 et seq.

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Dear Ms. Olander:

You inquired in your letter of last October whether corporations, companies or firms which are not professional corporations (as defined in K.S.A. 1978 Supp. 17-2707) may offer to provide or perform any of the professional services under the jurisdiction of the Board of Technical Professions. K.S.A. 1978 Supp. 74-7001 provides in part:

"(a) Except as otherwise provided in this act, it shall be unlawful for any person to practice in the state of Kansas, any profession included within the term technical professions, as such term is defined in the provisions of this act, unless such person has been duly licensed to practice such profession under the provisions of this act."

K.S.A. 1978 Supp. 74-7003 defines the term "technical professions" "[to] include the professions of engineering, land surveying, architecture and landscape architecture as the practice of such professions are defined in this act."

K.S.A. 1978 Supp. 74-7029 further clarifies the parameters of permissible conduct. It provides in pertinent part:

"It shall be a class A misdemeanor for any person to: (a) Practice or offer to practice or hold himself or herself out as entitled to practice any technical profession unless duly licensed as provided in this act; (b) present or attempt to use as his or her own the license or seal of another; (c) falsely impersonate any other practitioner of like or different name; (d) give false or forged evidence to the board or any member thereof in obtaining a license; (e) use or attempt to use a license that has expired or been suspended or revoked; (f) falsely advertise as a licensed practitioner; (g) use in connection with his or her name, or otherwise assume, or advertise any title or description intended to convey the impression that he or she is a licensed practitioner; (h) otherwise violate any of the provisions of this act."

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The statute is clear in that it allows only licensed persons to perform, or to offer to perform any of the functions associated with the technical professions under the Board's jurisdiction. Thus, conduct which would mislead the public as to the legal status of an individual is clearly proscribed by K.S.A. 1978 Supp. 74-7029.

The provisions of K.S.A. 1978 Supp. 17-2706 et seq. expressly permit the formation of professional corporations which may perform or offer to perform services of the type regulated by the Board of Technical Professions. Prior to the passage of K.S.A. 17-2706 et seq. in 1965, it was well established in Kansas that a corporation could not hold itself out to perform professional services of the type that the legislature had exclusively granted to individuals. See State ex rel., v. Goldman Jewelry Co., 142 Kan. 881 (1935); State ex rel., v. Zale Jewelry Co., 179 Kan. 628 (1956); U.S. v. Kintner, 216 F.2d 418 (1954).

State ex rel., v. Goldman, supra, was very analogous to the case at hand. In that case a corporation was holding itself out to perform optometry services. The court held that, where the statutes specifically provide that only individual persons are entitled to practice optometry, such a provision effectively precludes a corporation from offering said services. This still exists as the general rule in Kansas. The effect of K.S.A. 1978 Supp. 17-2706 et seq. was to grant a qualified exception to this general rule. To hold that non-professional corporations possess the capability of offering professional services would be to use the qualified exception found within K.S.A. 1978 Supp. 17-2706 et seq. as a sword to cut through the Kansas case law that is cited above. Further, such a holding would grant another exception to the general rule when, in fact, such an intent is conspicuously absent from any existing statutory language, either in word or in thought. We are of the opinion, therefore, that only persons licensed pursuant to K.S.A. 1978 Supp. 74-7001 et seq., and professional corporations composed of such persons and formed pursuant to K.S.A. 1978 Supp. 17-2707 may perform or offer to perform the types of services which are under the jurisdiction of the Board of Technical Professions. Note, however, that there are, in fact, some statutory exceptions to this general rule, at least as to the performance of such functions. K.S.A. 1978 Supp. 74-7033 provides some express exceptions for the performance of certain engineering services by persons not licensed under the act.

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K.S.A. 1978 Supp. 74-7034 provides similar exemptions for the performance of certain land surveying services. However, these exceptions deal only with the performance of such professional functions. There is no statutory exception which would permit non-licensed persons, or non-professional corporations, to offer to perform such services.

You also seek clarification of the meaning of K.S.A. 1978 Supp. 74-7029, set out above. Specifically, you inquire whether persons who describe themselves as "sanitary engineers," "lubrication engineers" or the like, are in violation of K.S.A. 74-7029(g), which provides "It shall be a class A misdemeanor for any person to . . . (g) use in connection with his or her name, or otherwise assume, or advertise any title or description intended to convey the impression that he or she is a licensed practitioner" (Emphasis added.)

To show a violation of the statute thus requires a showing that a person has adopted the description with the specific intention of deceiving others as to his or her true status. K.S.A. 1978 Supp. 74-7004(i) defines the practice of engineering as "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" Because the services rendered by persons describing themselves as "sanitary engineers" or "lubrication engineers" do not ordinarily fall within the definition of the practice of engineering as performed by licensed practitioners, it would be difficult to establish that such persons adopted the description with the intent to "convey the impression that he or she is a licensed practitioner . . ." K.S.A. 1978 Supp. 74-7029(g). This of course can only be determined on the basis of each individual case but we are of the opinion that, as a general rule, it would be difficult to prove that persons who so describe themselves have such an intent.

Finally, you inquire whether persons who are exempt from the Board of Technical Professions Act by K.S.A. 1978 Supp. 74-7035 are also exempt from K.S.A. 1978 Supp. 74-7029. Specifically, you ask: "May an unlicensed employee of a licensed engineer, who is exempted from the provisions of the Board of Technical Professions Act by K.S.A. 1978 Supp. 74-7035(b), hold himself out as an engineer by signing letters "John Doe, engineer" without violating K.S.A. 1978 Supp. 74-7029?"

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K.S.A. 1978 Supp. 74-7035(b) provides:

"The provisions of this act shall not apply to: . . . (b) the work of an employee or a subordinate of a person holding a license under this act, or an employee of a person practicing lawfully under subsection (a) of this section, provided such work does not include final designs or decisions, responsible charge of design or supervision and is done under the direct responsibility and supervision of a person practicing lawfully under subsection (a) of this section"
(Emphasis added.)

The intent of the statute is clear. It is drafted solely for the purpose of allowing certain services to be performed by nonlicensed employees under the "direct responsibility and supervision of a person practicing lawfully" Like the other statutory exemptions provided in the act (K.S.A. 1978 Supp. 74-7033; K.S.A. 1978 Supp. 74-7034), K.S.A. 1978 Supp. 74-7035 exempts from the act the work of certain employees under specific circumstances. The statutes do not, however, permit unlicensed persons to offer to perform professional services, nor do they permit such persons to hold themselves out as licensed to perform such services when that is not, in fact, the case.

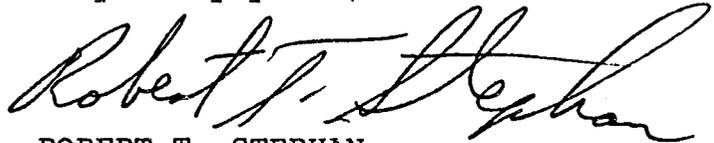
In our opinion, the legislature intended to exclude only the actual work product of such employees from operation of the act. Therefore, conduct by unlicensed employees which constitutes misrepresentation of the sort proscribed by K.S.A. 1978 Supp. 74-7029 is not exempted by K.S.A. 1978 Supp. 74-7035 and would violate the act.

In sum, the operation of K.S.A. 1978 Supp. 74-7001 et seq., the Board of Technical Professions Act, and K.S.A. 1978 Supp. 17-2707 et seq., the Professional Corporations Act, serve to authorize the performance of professional services such as engineering, land surveying, architecture and landscape architecture, by only those persons who are licensed pursuant to K.S.A. 1978 Supp. 74-7001 and by professional corporations, composed of such persons, and incorporated pursuant to K.S.A. 1978 Supp. 17-2707 et seq. Unlicensed persons and nonprofessional corporations may neither offer to perform professional services nor may they hold themselves out as being legally authorized

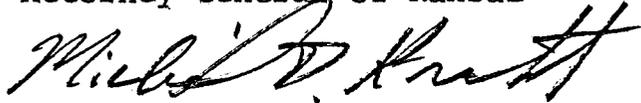
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to perform such services (K.S.A. 1978 Supp. 74-7029). However, the statutes do permit certain unlicensed persons in specific relationships with their employer or with a licensed professional, to perform limited professional services so long as such services are rendered in a manner consistent with the exceptions set out in K.S.A. 1978 Supp. 74-7033 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Michael D. Kracht
Assistant Attorney General

RTS:BJS:MDK:gk