

Date Issued: June 11, 1981 (AGO 81-57)

Requested by: State Board of Registration for Professional Engineers and Land Surveyors

- QUESTIONS PRESENTED -

I.

Whether the State of North Dakota and its political subdivisions are exempt from the provisions of Section 43-19.1-28 of the North Dakota Century Code requiring the supervision of a registered professional engineer in construction of public work projects contemplating an expenditure in excess of five thousand dollars.

II.

Whether the State Board of Registration for Professional Engineers and Land Surveyors may enforce compliance by the state and its political subdivisions with the provisions of section 43-19.1-28, N.D.C.C., if the state and its political subdivisions are not exempt from that law.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the state and its political subdivisions must comply with section 43-19.1-28, N.D.C.C., and employ a registered professional engineer in the construction of a public works contemplating an expenditure in excess of five thousand dollars.

II.

It is my further opinion that the board may ensure compliance with the provisions of chapter 43-19.1, N.D.C.C., pursuant to section 43-19.1-32, N.D.C.C.

- ANALYSIS -

I.

Section 43-19.1-28, N.D.C.C., provides:

43-19.1-28. PUBLIC WORKS. This state and its political subdivisions, including counties, cities, townships and legally constituted boards, districts, commissions, or authorities, shall not engage in the construction of public works involving the practice of professional engineering as herein defined when the contemplated expenditure for the project shall exceed the sum of five thousand dollars, unless the engineering drawings and specifications

and estimates have been prepared by, and the construction is executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section shall be null and void. Subsection 5 of section 43-19.1-29, N.D.C.C., provides the following exemption:

43-19.1-29. EXEMPTION CLAUSE. This chapter shall not be construed to prevent or affect:

* * *

5. The practice of engineering and land surveying by any persons regularly employed to perform engineering services solely for his employer or for a subsidiary or affiliated corporation of his employer, providing the engineering performed is in connection with the property, products or services of his employer.

These sections of the law were passed as part of chapter 43-19.1, N.D.C.C., by the 1967 Legislative Assembly and must be construed together and reconciled if possible.

There is no legal basis to the contention that the exemption in section 43-19.1-29(5), N.D.C.C., applies only to private businesses or corporations and not to the state or its political subdivisions. The term "employer" is not limited specifically to private businesses or corporations, and therefore must be construed as applicable to the state and its political subdivisions.

The general exemption in section 43-19.1-29, N.D.C.C., does not exempt the state or its political subdivisions from the specific requirements of section 43-19.1-28, N.D.C.C. However, section 43-19.1-28, N.D.C.C., applies only to the construction of public works and not to the maintenance or the operation of any public works.

Construing these two sections together, the state or its political subdivisions are allowed to employ a nonregistered engineer to perform engineering services in the course of his job provided that if the state or a particular political subdivision desire to construct public works involving a contemplated expenditure exceeding five thousand dollars, it would have to employ a registered professional engineer for the design and construction of the public works.

II.

The board's enforcement authority is contained in section 43-19.1-32, N.D.C.C., which provides:

43-19.1-32. DUTY OF ATTORNEY GENERAL - LEGAL COUNSEL. The attorney general of the state or his assistant shall act as legal adviser to the board and render such legal assistance as may be necessary in carrying out the provisions of this chapter. The board may employ other counsel and

necessary assistance to aid in the enforcement or administration of this chapter, and the compensation and expenses therefore shall be paid from funds of the board.

The enforcement of the provisions of chapter 43-19.1, N.D.C.C., rests with the board, and the board's legal counsel can advise the board as to its ability to enforce compliance with chapter 43-19.1, N.D.C.C., as factual circumstances arise.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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