S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 9, 2007

Opinion No. 07-100

Definition and Use of Title "Engineer"

QUESTIONS

1. Within the Tennessee Code Annotated, what is the definition of the term "engineer," specifically as it is used within Tenn. Code Ann. §§ 62-2-101 through 62-2-105?

2. In Tenn. Code Ann. § 62-2-103, do the exemptions in this section allow individuals who graduated from an engineering program that is not accredited by the Accreditation Board for Engineering and Technology (ABET) to use the title "engineer" internally or publicly?

3. Does anything in the Tennessee Code Annotated allow for individuals without ABET accredited engineering degrees to use the title "engineer" internally or publicly?

4. What does the term "public use" mean within Tenn. Code Ann. § 62-2-103(4) as well as other places within Tenn. Code Ann. §§ 62-2-101, *et seq.*?

5. Do the legal penalties stated in Tenn. Code Ann. § 62-2-105 affect those individuals exempted in Tenn. Code Ann. § 62-2-103 if they are not offering their services for compensation?

OPINIONS

1. Tenn. Code Ann. §§ 62-2-101 through 62-2-105 do not define the term "engineer." One must review the regulatory scheme, including rules promulgated by the State Board of Examiners for Architects and Engineers, to define "engineer."

2. The right to use the title "engineer," whether internally or publicly, does not depend upon whether the user has graduated from an ABET accredited program.

3. Tenn. Code Ann. §§ 62-2-101, *et seq.*, do not prohibit graduates from unaccredited engineering programs from applying to register or from qualifying for an exemption from registration. Other statutes, state and federal, may allow the public use of the term "engineer" in specific instances.

4. "Public use" includes a verbal claim, sign, advertisement, letterhead, card, or any other method an individual might use that represents herself to be an engineer, directly or by implication.

5. The penalties listed in Tenn. Code Ann. § 62-2-105 apply to any person who commits an offense listed in that statute. None of the offenses described in that statute contains as an element any requirement that the offender has received compensation in connection with the violation.

ANALYSIS

1. The statutes you have cited do not define the term "engineer." In ordinary parlance, an "engineer" is a person trained or professionally engaged in a branch of engineering, and "engineering" is the application of scientific and mathematical principles to practical ends such as the design, construction, and operation of efficient and economical structures, equipment, and systems. *The American Heritage Dictionary* (2nd Coll. ed. 1985). The regulatory scheme, read as a whole, provides guidance concerning those activities that constitute the practice of engineering requiring registration by the State Board of Examiners for Architects and Engineers. *See* Tenn. Code Ann. §§ 62-2-101, -102(b), -103(1) through (4), -104 and -105(c); *Tenn. Admin. Reg.*, 0120-1 (Registration Requirements and Procedures) and, specifically, *Tenn. Admin. Reg.*, 0120-1-.10; Board policy, "Delineation of Engineering and Surveying" (copy attached).[1]

Other Tennessee Code Annotated sections use the term "engineer." We do not attempt, however, to give a general legal definition of "engineer." Among other reasons, engineers, architects and landscape architects' services are sometimes similar, especially from the perspective of a lay person. Defining the term "engineer" requires researching each statute in which the term appears. Some statutes refer back to Tenn. Code Ann. §§ 62-2-101, *et seq.,* and require state registration under that regulatory scheme, but not every statute does. For example, the term "railroad [locomotive] engineer" occurs in Tenn. Code Ann. § 55-10-116. Federal law defines the term "locomotive engineer," not state law. *See* 49 U.S.C. § 20106 and 49 C.F.R. § 240.7.

2. As a general proposition, if a person wants to practice engineering in Tennessee and wants to use the title "engineer" publicly, she must register with the state.[2] Tenn. Code Ann. § 62-2-101. The statutes do exempt some engineering practices and persons from registration. Tenn. Code Ann. §§ 62-2-102, -103. No person falling within an exempt category, however, may make public use of the title "engineer." Tenn. Code Ann. § 62-2-103. For example, a person who works for a registered engineer and who is not in charge of a project or a supervisor and who does not make

[1] This policy is available on the Board's web site, under the Department of Commerce and Insurance, http://state.tn.us/commerce/boards/

[2] A person may use "engineer" or "engineering" in its corporate or business name, without being registered, if the business, corporation or other entity was doing business in January 1, 1967, and the entity is not practicing engineering. Tenn. Code Ann. § 62-2-102(d).

public use of the title "engineer" is exempt from registration. Tenn. Code Ann. § 62-2-103(1). Other examples of persons exempt from the statutory scheme include the following:

a. Out-of-state "consulting" engineers, provided certain criteria are met. Tenn. Code Ann. § 62-2-103(2).

b. Engineers employed by a municipal electric system or electric and community service corporation or a telephone cooperative who (a) render engineering services to their employers only and (b) not to the general public for compensation (other than the compensation which the engineer receives from his employer) and (c) do not make public use of the title "engineer." Tenn. Code Ann. § 62-2-103(4).

c. An engineer who is employed by a person, firm or corporation that is not engaged in the practice of engineering and who renders engineering services to his employer only and not to the public. Tenn. Code Ann. § 62-2-103(3).

d. A person who prepares plans and specifications for a structure that is less than three stories and less than 5000 square feet and who does not make public use of the title "engineer." Tenn. Code Ann. § 62-2-102(b).

Nothing in Tenn. Code Ann. §§ 62-2-102 or 62-2-103 prohibits a person who graduated from a program that is not ABET accredited from applying to register with the State or from qualifying for exempt status.

3. Individuals who graduate from engineering programs that are not ABET accredited may be able to use the title "engineer" publicly if they register with the state or if they fall within an exempt category and do not make public use of the title. Graduating from a foreign or domestic unaccredited engineering program is not, *per se*, a barrier to state registration or practicing engineering. *See* Tenn. Code Ann. § 62-2-401(a)(1) and *Tenn. Admin. Reg.*, 0120-1-.10 (Registration Requirements and Procedures). The Board may register such an individual, provided certain curriculum and other criteria are met to the satisfaction of the Board. *Tenn. Admin. Reg.*, 0120-1-.10. Thus, an engineer graduating from a non-ABET accredited program might be able to use the title "engineer" either because she is a state registered engineer, or because she falls within an exempt category that allows nonpublic use of the title.

4. Unregistered individuals are forbidden from making "public use" of the title "engineer," but the statutes and regulations do not expressly define "public use." Reading the statutory scheme as a whole, however, provides a clear picture of what the term means. Under Tenn. Code Ann. § 62-2-105 (penalties), no unregistered person may practice or offer to practice engineering "who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents [an individual] to be an . . . engineer, with or without qualifying adjectives or through the use of some other title implies that the person is an . . . engineer." Tenn. Code Ann. § 62-2-105(c).

5. The penalties found in Tenn. Code Ann. § 62-2-105 apply to any individual who commits an offense listed, regardless of whether the individual claims an exempt status under Tenn. Code Ann. § 62-2-103 and regardless of compensation. Tenn. Code Ann. § 62-2-103 begins with the following phrase, "The following shall be exempted from the provisions of this chapter." By contrast, Tenn. Code Ann. § 62-2-105, which is part of the same chapter of the code, begins, "*No person* shall [commit the following offenses] . . . ." (Emphasis supplied). The issue is whether a person exempted by the first statute is nonetheless subject to the second statute. While these two statutes might appear somewhat contradictory, they actually complement one another. Tenn. Code Ann. § 62-2-103, which establishes the exemptions, states unequivocally that, "nothing in this section shall be construed as exempting *any person* who makes public use of the title 'engineer.'" (Emphasis supplied). Thus an individual exempt under this provision will lose her exemption if she makes public use of the title "engineer."

Similarly, the penalties in Tenn. Code Ann. § 62-2-105 target individuals who falsely identify themselves, or hold themselves out, as "engineers." A goal of both statutes is to prohibit individuals from representing themselves as engineers or implying they are engineers when they are not legally authorized to do so. If a person maintains exempt status under Tenn. Code Ann. § 62-2-103 by not making public use of the title "engineer," by definition she is unlikely to fall within the conduct prohibited by Tenn. Code Ann. § 62-2-105. If a person is not exempt, she is subject to Tenn. Code Ann. § 62-2-105. None of the offenses described in that statute contain as an element any requirement that the offender has received compensation in connection with the violation.

ROBERT E. COOPER, JR.
Attorney General

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Bill Harmon
State Representative
108 War Memorial Bldg.
Nashville, TN 37243