

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE  
1997 Tenn. AG LEXIS 176  
Opinion No. 97-155  
November 14, 1997

*Applicability of Tennessee's engineer registration laws, Tenn. Code Ann. §§ 62-2-101 et seq., to the Welding Engineer Program of the American Welding Society*

**Request By:**

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**QUESTIONS**

The American Welding Society ("AWS") is a national, voluntary, nonprofit, tax-exempt organization with members employed in all major industries, including automotive, energy, boiler, aerospace, shipbuilding, construction, and transportation. Currently, the AWS is introducing a new certification program known as the AWS Welding Engineer Program, which will provide a member the opportunity to become certified by the AWS as an "AWS Welding Engineer." To become certified as an "AWS Welding Engineer," a candidate must satisfy certain educational and experience prerequisites as well as pass a multi-part written examination. A certified person earns the title "AWS Welding Engineer."

1. By granting the title "AWS Welding Engineer" to individuals in the State of Tennessee, would the American Welding Society be in violation of Tenn. Code Ann. 62-2-101 or 62-2-105(b), which restrict the use of the title "engineer" in Tennessee to registered engineers?

2. a. Would the use of the designation "AWS Welding Engineer" by individuals in the State of Tennessee constitute a *per se* violation of Tenn. Code Ann. 62-2-101 or 62-2-105(b)?

b. If not, would such use constitute a violation of these statutory provisions only if there is objective evidence of deception or misleading of the general public?

3. Is the use of the word "engineer" in the designation "AWS Welding Engineer" inherently misleading or deceptive?

**OPINIONS**

1. No. The American Welding Society itself would not violate Tenn. Code Ann. 62-2-101 or 62-2-105(b) by granting the "AWS Welding Engineer" title to persons in Tennessee because the act of issuing certifications does not constitute the practice of engineering, as defined in Tenn. Code Ann. 62-2-105(c).

2. Yes. An individual would violate Tenn. Code Ann. 62-2-101 and 62-2-105(b) by using the title "AWS Welding Engineer" unless that person is properly registered as an engineer under Tennessee law.

3. Based on the answer to the preceding question, it is not necessary to respond to this question.

## **ANALYSIS**

The registration requirements prescribed for engineers in Tennessee are codified at Tenn. Code Ann. 62-2-101 through 405 (hereinafter referred to generally as the "Engineer Title Registration Act" or the "Act"). Your opinion request relates to Part 1 of the Engineer Title Registration Act, which generally sets forth the applicability of the registration requirement and the penalty for violating the Act. Specifically, you inquire whether the AWS would violate Tennessee Code Ann. 62-2-101 and 62-2-105(b) by issuing the title "AWS Welding Engineer" to an individual in Tennessee who is not registered as an engineer. Secondly, you ask whether an unregistered individual in Tennessee who uses the title "AWS Welding Engineer" violates these provisions.

Tennessee Code Ann. 62-2-101 and 62-2-105(b) generally make it unlawful for a person to practice engineering in Tennessee unless such person is registered in Tennessee as an engineer. Tennessee Code Ann. 62-2-101 provides that the purpose of the registration requirement is to "safeguard life, health and property, and to promote public welfare."

The Engineer Title Registration Act does not define the term "engineer" or enumerate engineering disciplines that are subject to the registration requirement. Instead, the Act places great emphasis on protecting the use of the title "engineer" and limiting its use only to registered engineers so that there can be no question in the mind of the general public whether an engineer is registered in Tennessee. The Act's penalty provision, found at Tenn. Code Ann. 62-2-105(c), broadly defines the "practice" of engineering as follows:

A person is construed to practice (or offer to practice) engineering, ... who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself to be an ... engineer ... with or without qualifying adjective, or through the use of some other title implies that he is an ... engineer....

Thus, in Tennessee only registered engineers may publicly use the title "engineer" or any title that includes the word "engineer." The Act's broad restriction applies to unlicensed persons in recognized engineering fields as well as to persons who merely call themselves engineers but whose work does not even fall within an area that qualifies for registration.

The rest of the Engineer Title Registration Act similarly limits the use of the title "engineer." For example, Tennessee Code Ann. 62-2-102 establishes that a person may practice engineering without registering unless the person prepares plans or specifications for buildings.<sup>1</sup> Subsection 62-2-102(a), however, specifically prohibits such unregistered person from using the title "engineer." The section reads in pertinent part:

(a) Except as provided in subsections (b) and (d), nothing in this section shall be construed as requiring registration for the purpose of practicing ... engineering ... by a person; provided, that the person does not use the appellation ... "engineer" ... an appellation which compounds, modifies or qualifies the word[] ... "engineering" ... or which gives or is designed to give the impression that the person using same is an ... engineer....

Another example of the Act's broad restriction on the use of the title "engineer" is found in Tenn. Code Ann. 62-2-103. This section exempts certain classes of persons from the chapter entirely, such as an engineer who is registered in another state and doing consultation work in Tennessee, or an engineer who provides engineering services to his or her employer only. Tennessee permits these persons to practice engineering without being registered, provided that they do not make "public use" of the title "engineer."<sup>2</sup>

The Tennessee Supreme Court has upheld the Act's broad restriction of the title "engineer" by unregistered persons. In *State Board of Examiners for Architects and Engineers v. Standard Engineering Co.*, 7 S.W.2d 47 (Tenn. 1928), the defendants were licensed plumbers who called their business "Standard Engineering Company" and represented on their stationery that they were "Engineers and Contractors for Plumbing, Heating and Ventilating Systems, Power Plant

Equipments." The defendants argued that their business was not within the scope of the Engineering Title Registration Act because they only did ordinary plumbing work. The Court held that the business fell within the purview of the Act because the defendants advertised themselves as engineers. The Court concluded:

While it is doubtless true that the defendants have not undertaken to practice architecture or engineering strictly speaking, and they might pursue their business, as they have in the past, without endangering the public safety or welfare, nevertheless they have seen proper to advertise themselves as engineers. This is prohibited by law unless they are in fact engineers. It is not to be controverted that acts innocent in themselves may, to prevent fraud and deception, be forbidden. The legislature having the power to regulate the practice of architecture and engineering in the interest of the public safety may deny to all except those qualified the right to advertise as architects or engineers.<sup>3</sup>

Turning now to the opinion request, you first inquire whether the AWS itself would violate the Engineer Title Registration Act by issuing the title "AWS Welding Engineer" to individuals in Tennessee who meet AWS's certification requirements. It is the opinion of this Office that this activity would not constitute a violation of Tenn. Code Ann. 62-2-101 and 62-2-105(b). By issuing the title, the AWS is not practicing engineering within the meaning of the Act, nor asserting that it is engaged in "engineering" itself.

You next ask whether a person who uses the title "AWS Welding Engineer" violates the Engineer Title Registration Act. Under the plain language of Tenn. Code Ann. 62-2-105, a person in Tennessee who is not registered as an engineer under the Act should not call himself or herself an "AWS Welding Engineer." The Act prohibits the use of the title if such person has not registered in Tennessee, even if such person publicly clarifies that he or she is not registered under Tennessee's Engineer Title Registration Act.<sup>4</sup> The Act, however, does not affect such person's right to pursue his or her "engineering" related work.

Finally, you ask whether the use of the word "engineer" in the designation "AWS Welding Engineer" is inherently misleading or deceptive. This opinion does not need to address this issue based on the conclusion that the use of the title "AWS Welding Engineer" by a person who is not registered under the Act would constitute a *per se* violation of the Engineer Title Registration Act. As discussed earlier, the Act's restriction on the use of the title "engineer" by unregistered persons carries out the legislative purpose of the registration requirement, which is to safeguard "life, health and property, and to promote public welfare."

**Opinion by:** JOHN KNOX WALKUP, Attorney General and Reporter; MICHAEL E. MOORE, Solicitor General; EUGENIE B. WHITESSELL, Assistant Attorney General

### **Footnotes**

1 Tenn. Code Ann. 62-2-102(b) lists specific types of structures to which the registration requirement does not apply.

2 See Op. Atty. Gen. 94-111 (October 6, 1994). In this opinion, this Office construed the meaning of one's making "public use" of the title "engineer."

3 *Id.* at 49.

4 This opinion does not address whether a person who uses the title "AWS Welding Engineer" would fall under any of the exceptions or exemptions of the Act. This determination would depend on the circumstances of each case. For example, as noted earlier, such person may fall under the exception to the Act that permits a person who renders services to his or her employer only and not to the general public, to use a title with "engineer" in it so long as the person does not make "public use" of the title.