

Opinion No. 63-27-L
R-147
January 30, 1963

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

REQUESTED BY: C. W. DRYDEN, Chairman
State Board of Technical Registration

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: May the State Board of Technical Registration require that the name of the registrant in responsible charge of a firm or corporation be imprinted on the stationery of the firm or corporation?

ANSWER: Yes, as limited by this opinion.

Arizona Revised Statutes § 32-141 reads as follows:

"§ 32-141. Firm or corporate practice.

No firm or corporation, shall engage in the practice of architecture, assaying, geology, engineering, or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation. The name of said registrant shall appear whensoever the firm name is used in the professional practice of the firm or corporation. As amended Laws 1956, Ch. 161, § 12."

The latter portion of the foregoing statutory provision makes it mandatory that the name of the registrant in responsible charge appear whensoever the firm or corporate name is used in the professional practice of the firm or corporation. It would appear that the answer to the propounded question would largely depend upon what constitutes "professional practice." A great deal of assistance in this regard can be found in the definitive section of the Arizona Revised Statutes covering architects, assayers, etc. (A.R.S. § 32-101).

Arizona Revised Statutes § 32-101(2) reads as follows:

"'Architectural practice' means any service or creative work requiring architectural education,

training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any building, or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents himself to be an architect, or holds himself out as able to perform any architectural service or other services recognized by educational authorities as architecture."

Arizona Revised Statutes § 32-101(4) reads as follows:

"'Assayer' means a person who analyzes metals, ores, minerals, or alloys in order to ascertain the quantity of gold or silver or any other substance present in them."

Arizona Revised Statutes § 32-101(7) reads as follows:

"'Engineering practice' means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project, and includes plans and designs relating to the location, development, mining and treatment of ores and other minerals. A person shall be deemed to be practicing or offering to practice engineering if he practices any branch of the profession of engineering, or by

verbal claim, sign, advertisement, letterhead, card or any other manner represents himself to be a professional engineer, or holds himself out as able to perform or does perform any engineering service or other service or recognized by educational authorities as engineering. A person employed on a full time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if he engages in the practice of engineering exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any engineering services for persons other than his employer."

Arizona Revised Statutes § 32-101(10) reads as follows:

"'Geological practice' means any professional service or work requiring geological education, training, and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties, and ground water resources, professional supervision of exploration for mineral natural resources including metallic and non-metallic ores, petroleum, and ground water, and the geological phases of engineering investigations."

Arizona Revised Statutes § 32-101(12) reads as follows:

"'Land surveyor' means a person who engages in the practice of surveying tracts of land for the determination of their correct locations, areas, boundaries and description, for the purpose of conveyancing and recording, or for establishment or re-establishment of boundaries and plotting of lands and subdivisions. As amended Laws 1956, Ch. 161, § 1."

There is very little case law defining "professional practice." In a fairly recent case, Forziati v. Board of Regis-

tration in Medicine, 333 Mass. 125, 128 N.E. 2d 789, 792, the Massachusetts Court said:

"We are also of opinion that the misconduct of the plaintiff could be found to have been 'in the practise of his profession.' These words of § 61 are not in our opinion limited, as the plaintiff would have us believe, to that which is done in the diagnosis and treatment of the patient. We are satisfied that they were intended to include all conduct of the practitioner in carrying on his professional activities."

It is felt that "professional practice" must be defined with reference to the known usages and modes of practice in the particular profession. Professional practice would certainly be involved if the application of professional education, training and skill was either essential or material to the service rendered or work produced.

It is the opinion of this office that the cited portions of A.R.S. § 32-101 supra, offer adequate and reasonable standards by which the State Board of Technical Registration can make a determination, under its fact-finding powers, as to whether a particular service or work is in fact professional practice. The law does not require that the name of the registrant in responsible charge of a firm or corporation be imprinted on all firm or corporate stationery. The requirement is mandatory when the stationery carrying the firm or corporate name is used in the professional practice of the firm or corporation. This would in turn depend upon a factual determination which could be made by the Board, using the definitive portions of A.R.S. § 32-101, supra, as standards or guides. If, under a factual situation, the Board was to determine that there had been a violation of A.R.S. § 32-141, supra, the Board could take appropriate action, pursuant to A.R.S. § 32-106(8) and as provided by A.R.S. §§ 32-128(2) and 32-145.


ROBERT W. PICKRELL
The Attorney General