



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

February 13, 1991

Ronald W. Dalrymple
Executive Director
Board of Technical Registration
1951 West Camelback Road, Suite 250
Phoenix, Arizona 85015

RE: 191-011 (R90-132)

Dear Mr. Dalrymple:

You have asked our opinion on two questions relating to the licensing of professional engineers and private investigators. You first require whether an engineer who is called upon to investigate the origin of fires involving electrical apparatus, and then testify at trial as an expert witness regarding the cause and origin of fires involving electrical components, must have a private investigator's license. Next, you inquire whether a licensed private investigator who investigates a matter involving engineering must become a licensed professional engineer.

For the reasons that follow, we conclude that an engineer so engaged need not become licensed as a private investigator. We further conclude that private investigators normally need not become licensed professional engineers in order to investigate matters involving engineering.

Chapter 24 of Title 32, Arizona Revised Statutes, regulates the conduct of private investigators. A private investigator is defined in A.R.S. § 32-2401(7), which provides in pertinent part:

"Private investigator" means a person . . . who, for any consideration, engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining information with reference to:

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

(e) Securing evidence to be used before any court, board, officer, or investigation committee.

Persons acting as private investigators are required to be licensed by A.R.S. § 32-2410, which provides:

No person shall engage in a business regulated by this chapter, act or assume to act as, or represent himself to be a licensee unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee.

Chapter 1 of Title 32, Arizona Revised Statutes, regulates the business of professional engineering. A professional engineer is defined by A.R.S. § 32-101, which provides in pertinent part:

"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, research investigation, [or] evaluation. . . . A person shall be deemed to be practicing or offering to practice engineering if he practices any branch of the profession of engineering, or holds himself out as able to perform or does perform any engineering service or other service or recognized by educational authorities as engineering. . . .

Persons acting as engineers are required to be licensed by A.R.S. § 32-121, which provides:

A person desiring to practice the profession of architecture, assaying, engineering, geology, landscape architecture, or land surveying shall first secure a certificate of registration and shall comply with all the conditions prescribed in this chapter.

The intent of the private investigator licensing requirement was not to limit the ability of engineers to engage in their profession. A.R.S. § 32-101 provides that consultation, research investigation and evaluation are all part of the practice of engineering. An interpretation of A.R.S. § 32-2410 that would require all engineers to become licensed private investigators in order to take the measurements and make the calculations necessary to practice their profession could not have been intended by the Legislature.

The rules of statutory construction support this interpretation of the statutes. Where the language of a statute is susceptible to several interpretations, a court will adopt that which is reasonable and avoids contradictions or absurdities. State Board of Dispensing Opticians v. Schwab, 93 Ariz. 328, 331 (1963). If a literal interpretation of the language leads to a result which produces an absurdity, the act must be construed so that it is a reasonable and workable law. City of Phoenix v. Superior Court, 101 Ariz. 265, 267, 419 P.2d 49, 51 (1966).

The precise legal issue of whether engineers must be licensed as private investigators in order to gather the information incidental to rendering a professional opinion has been dealt with by other courts in this circuit. Directly on point is Kennard v. Rosenberg, 127 Cal. App. 2d 340, 273 P.2d 839 (1954). In that case, experienced chemists were retained as consultants to assist a litigant in pursuing his case. In performing their duties, the chemists "examined the premises, consulted with [defendant's attorney] and the defendant, made many tests, took samples from the premises, examined photographs, conducted experiments in their laboratories and on the premises, and prepared many exhibits for use in court". Id. at 840-841. The experts then testified at the defendant's trial.

The court held that the California statute requiring licensing of private investigators did not apply in this case. The statute involved in Kennard is nearly identical to Arizona's licensing law.^{1/}

1. The California Private Detective License Law in effect at the time of the Kennard ruling read as follows:

A private investigator within the meaning of this chapter is a person other than an insurance adjuster who, for any consideration whatsoever engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to: * * * the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee.

Id. at 841 (citing the California Business and Professions Code, § 7521).

Mr. Ronald W. Dalrymple
February 13, 1991
Page 4

The court held: "It seems quite clear that the private detective license law was not intended by the Legislature to place a limitation on the right of professional engineers to make chemical tests, conduct experiments and to testify in court as to the results thereof." Id. at 841.

This same line of reasoning was followed in Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (1969).

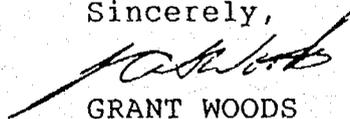
In our opinion, engineers who are retained as expert witnesses, or as consultants, or who are otherwise called upon in the course of their professional duties to make tests, conduct experiments, take samples and examine evidence are not engaged in the business of private investigation, and need not be licensed as private investigators.

In your second inquiry you have requested our opinion concerning whether a licensed private investigator who investigates a matter involving the engineering sciences is in violation of state law if he or she is not a registered professional engineer. We conclude that private investigators normally need not be so registered.

A.R.S. § 34-2401 provides that investigation for the purpose of obtaining information with reference to the cause or responsibility for fires, libels, losses, accidents or damage or injury to persons or property is all part of the practice of private investigation. In order to complete an investigation, an investigator must necessarily take measurements, interview witnesses and gather evidence. Applying A.R.S. § 32-121 to this type of work would necessitate that all private investigators investigating matters which touch upon, for example, the engineering sciences, would have to become licensed professional engineers. We conclude that this the Legislature did not intend this when it enacted A.R.S. § 32-121.

As outlined above, only licensed professional engineers are qualified to provide services for which engineering education, training and experience are required. So long as an investigator refrains from performing services which would require the special knowledge of a professional engineer, an investigator investigating a matter involving engineering science is not required to become a licensed professional engineer.

Sincerely,



GRANT WOODS
Attorney General

GW:KC:lfc