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Robert K. Corbin

June 21, 1989

Mr. Ronald W. Dalrymple
Executive Director
State of Arizona Board of
Technical Registration
5060 North 19th Avenue, Suite 306
Phoenix, Arizona 85015

Re: I89-054 (R89-043)

Dear Mr. Dalrymple:

You ask whether employees of the cities of Phoenix and Tucson serving in the positions of Civil Engineer I and Civil Engineer II are required to be registered engineers.

If the work performed by employees occupying those positions is embraced within the scope of the statutes defining and regulating the practice of engineering, Chapter 1, Title 32, Arizona Revised Statutes, the employees must comply with the requirements of those statutes.

A.R.S. § 32-101(B) in relevant part provides:

8. "Engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as attested by his registration as a professional engineer.

9. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the

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mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 19, subdivisions (d) and (e), design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore 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. . . .

To determine whether only registered engineers may perform the work performed by the employees occupying the positions about which you inquired, one must determine whether the work necessarily is embraced within the scope of the operative regulatory statute. Jackling v. Snyder, 3 Ariz. App. 63, 411 P.2d 822 (1966).

You furnished to us the job descriptions of the positions about which you inquired. We noted from those descriptions that a Civil Engineer I in the employ of the City of Tucson may be expected to perform work that includes "planning and design of construction projects and related operational programs for water production, water distribution, street, drainage-way or traffic systems." Under the heading "Examples of Work Performed" the following appears:

Participates in preliminary design studies to determine appropriate applications of civil engineering concepts to construction projects of limited scope where information is readily available and problems are few and well defined, with some requiring original solutions.

The Tucson Civil Engineer II position, according to the description, involves "technical civil engineering, project planning, design and field work involved in implementing municipal capital improvement projects, reviews for codes, regulations, and drainage, private development projects and other work performed within the public right-of-way and private property." The Phoenix Civil Engineer I position, according to the position description, "[p]erforms civil engineering work at the beginning professional level in the field, laboratory and office." The Phoenix Civil Engineer I applies basic professional skills to various public works engineering matters. The "Examples of Work" identified in the job description informs us that a Phoenix Civil Engineer I "[p]articipates in the inspection and construction of various public works construction projects; [p]repare[s] contract specifications and compiles and/or reviews detailed plans and cost estimates for various public works projects;" and, "[r]eviews the construction plans of new water or sewer lines and/or prepares detailed plans, specifications and estimates of proposed new water or sewer line projects."

The Phoenix Civil Engineer II position, according to the position description, "[p]erforms civil engineering work at the intermediate professional level in the field, laboratory and office." The "Examples of Work" listed in the job description indicate that a Phoenix Civil Engineer II "[s]erves as project engineer in the design and review of moderately complex public works projects; [p]repare[s] and reviews detailed plans, specifications and estimates for various public works projects; . . . [d]esigns and develops plans and specifications for sanitary landfills and appurtenant structures including buildings, roads, drainage facilities and water and power supply;" and, "[s]erves as Assistant District or Structural Engineer for construction administration and inspection of public works projects."

Our review of the job descriptions that you furnished to us leads us to the conclusion that the employees in those positions are engaged in engineering practice when they perform the activities identified in the job descriptions.

Whether any specific employee, in fact, is engaged in engineering practice is a determination that is beyond the scope of this opinion.

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We hasten to point out to you, however, that the fact that the employees in question may be engaged in activities that constitute the practice of engineering may not be determinative of whether they also must secure a certificate of registration from the State Board of Technical Registration.

Because the work of the employees in question involves "public works" of political subdivisions, one must consider also A.R.S. § 32-142 which provides:

A. Drawings, plans, specifications, estimates and construction observation for public works of the state or a political subdivision thereof involving architecture, engineering, assaying, geology, landscape architecture or land surveying shall be prepared by or under the direct supervision of a registrant within the category involved.

B. Surveys, maps or assays required in connection with public land surveying or assaying shall be made by or under the personal direction of a qualified registrant.

C. Drawings, plans, design specifications and construction observation of public works facilities of the state or a political subdivision thereof for the use or storage of hazardous materials shall be made by or under the direct supervision of a qualified registrant in the appropriate field.

From A.R.S. § 32-142 we conclude that one may engage in the engineering practice activities listed in § 32-142 respecting a political subdivision's public works either as a registrant or under the direct supervision of a registrant and that if one is directly supervised by a registrant one need not be a registrant in order to engage in such engineering practice.

In direct response to your request, therefore, our opinion is that the employees in question who are performing engineering practices must be registered with the State Board of Technical Registration unless they are supervised directly by a registrant, in which case they need not be registered.

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Whether the employees in question are supervised directly by a registrant is a consideration also beyond the scope of this opinion.

Sincerely,



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