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FOREIGN CORPORATION NOT ENTITLED TO PRACTICE ENGINEERING IN ITS OWN STATE AND BARRED BY STATUTE TO PRACTICE IN OHIO CANNOT SUBLET TO OTHER PARTIES THE WORK WHICH THE LAW DOES NOT PERMIT SAID CORPORATION TO PERFORM—§4733.16, R.C. OPINION NO. 114, OAG FOR 1945, P-69 §1704.04, R.C.

SYLLABUS:

A foreign corporation, not entitled to practice engineering in its own state, and barred by statute to such practice in Ohio, is not permitted to do engineering work in this state; further, such corporation being barred to contract or perform such professional services, likewise cannot agree to such a contract and arrange for third parties by subletting that portion of the contract to do such professional services in a field for which the law has closed to such corporation.

Columbus, Ohio, August 28, 1961

Hon. William H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir:

I have your request for my opinion reading in part as follows:

“I respectfully request your opinion upon the following questions:

“1. Can an Illinois corporation who has neither the word engineer in its corporate name, nor sets out in its purpose clause

the right to do engineering and designing, but, however, holds itself out to the general public by advertisement on letterhead and otherwise 'engineers and builders', qualified to do business in the State of Ohio, enter into a contract to perform in the State of Ohio, the following services, in the face of Chapters 4703 and 4733 of the Revised Code :

"The Contractor shall prepare all necessary plans and specifications and shall submit the same to the owner for approval. The work shall be executed in conformity therewith, and the contractor shall perform no work until such plans and specifications have been approved in writing by the owner. Unless otherwise stated in detailed specifications, two copies of all approved drawings and specifications shall be furnished to the owner and an additional copy shall be kept at the site of the work, available for the examination and use of the owner's representatives. Upon completion of the work the contractor shall furnish to the owner, without additional charge, one complete set of the final drawings reproduced on sensitized linen from which the prints can be made and such additional sets as may be stated in detailed specifications.'

"2. If said corporation cannot enter into and perform a contract as above set forth, can said corporation enter into a contract requiring the above services, sublet the designing and engineering work called for in said contract to Ohio registered engineers and architects, then proceed to perform said contract?"

With respect to the first question raised in your opinion, a predecessor in office has had occasion to discuss some aspects thereof. Opinion No. 114, Opinions of the Attorney General for 1945, page 66. In addition, it hardly requires citation of authority to state that the Legislature has the full authority to impose the terms and conditions upon which a foreign corporation may be admitted to business in this state. Further, in 23 American Jurisprudence, 81, it is stated :

"The public policy of the state with respect to the recognition and admission of foreign corporations may be ascertained by reference to the general course of legislation of the state, either by prohibiting or enabling acts *or by its general course of legislation on a give subject*, or it may be deducted from the settled adjudications of the highest court and from the constant practice of its government officers." (Emphasis added)

In addition, Section 1704.04, Revised Code, represents a statutory expression by the Legislature expressly prohibiting any corporation, foreign or domestic, to practice a profession. It may be pointed out inci-

dentally, that the recent 104th General Assembly enacted sections 1785.01 to 1785.08, Revised Code, inclusive, so as to permit the establishment of professional associations. However, this new law in no way changes the general rule that remains undisputed in that a corporation cannot practice a profession. The rationale in support of this position is obvious in that a corporation cannot meet the licensing requirements of a profession, in that it cannot take a test to show requirements as to education and experience or meet other specifications of the applicable statutes.

In specific point, Section 4733.02, Revised Code, which prohibits the practice of engineering further bars the “\* \* \* use in connection with his name, or otherwise, assume, use, or advertise any title or description tending to convey the impression that he is an engineer or a surveyor, unless such person has been registered or exempted under Sections 4733.01 to 4733.23, inclusive, of the Revised Code.”

Even more emphatic therein would be Section 4733.16, Revised Code, which reads as follows:

“A firm, copartnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

“No corporation shall be granted a charter to engage in the practice of professional engineering or surveying, nor shall any corporation formed after August 6, 1943, *use or assume* a name involving the word ‘engineer’ or ‘engineering’ or any modification or derivative of such term except a nonprofit membership corporation.” (Emphasis added)

Thus it seems clearly the law, as stated in Opinion No. 114, Opinions of the Attorney General for 1945, page 69:

“Certainly these statutes disclose plainly the policy of the state relative to corporations either domestic or foreign, not merely in excluding all such corporations from practicing engineering in Ohio but preventing the use of a name which would lead the public to assume that they are authorized to do so.”

Research would also persuade me that the status of the law is the same in the domiciliary state of the corporation under discussion. Thus it is difficult in the extreme to see how this corporation could enjoy a privilege in Ohio to which it is not entitled in Illinois, whence it derives.

With respect to your second question as to the validity of the contract in question, I would direct to your attention the case of *McGill Construction Company vs. Carlos*, 39 O. O. 502. In this cause there was an attempt to recover under an oral contract whereby the plaintiff, an unregistered architect, was to provide plans and specifications for the construction of a dwelling. The court held that the plaintiff was not entitled to recover on the grounds that the plaintiff was not a licensed architect and that therefore the contract, being in violation of a statute, was unlawful, void and unenforceable.

In the question that you raise, with respect to the subletting of the work in question, it is actually a matter that a person may not do indirectly that which is forbidden to him directly. Surely it would be a mockery of the statutes and case law of Ohio to allow an avoidance of the law by such an obvious and transparent circumvention.

Furthermore, the licensing professions and other responsibilities incumbent upon a profession for the protection of the public would disappear, since under such a proposed contract, a member of the public would be limited in any suit for recovery to a claim against the second party. If the such second party had sublet the professional work in question, there would be obviously little possibility to hold the subcontracting engineer or architect to account for any deviation from professional standards.

It is therefore my position that a foreign corporation, not entitled to practice engineering in its own state, and barred by statute to such practice in Ohio, is not permitted to do engineering work in this state; further, such corporation being barred to contract or perform such professional services, likewise cannot agree to such a contract and arrange for third parties by subletting that portion of the contract to do such professional services in a field for which the law has closed to such corporation.

Respectfully,

MARK McELROY

Attorney General