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PROFESSIONAL ASSOCIATION OF ENGINEERS IS AUTHORIZED TO INCORPORATE—SUCH AN ASSOCIATION IS PRECLUDED FROM ASSUMING A NAME INVOLVING THE WORD “ENGINEER” OR “ENGINEERING” OR ANY MODIFICATION OR DERIVATIVE OF SUCH TERM—CHAPTER 1785., §§1701.03, 4733.16, R.C., AM. SENATE BILL NO. 520 OF 104TH G. A.

SYLLABUS:

1. The provisions of Chapter 1785., Revised Code, enacted by Amended Senate Bill No. 550 of the 104th General Assembly, effective October 17, 1961, and authorizing the incorporation of a professional association of engineers, constitute an exception to the provisions of Sections 1701.03 and 4733.16, Revised Code, which sections prohibit the forming of a corporation to practice professional engineering.

2. A professional association of engineers, incorporated pursuant to Chapter 1785., Revised Code, is precluded by the terms of Section 4733.16, Revised Code, from using or assuming a name involving the word “engineer” or “engineering” or any modification or derivative of such term.

Columbus, Ohio, September 22, 1961

Honorable Ted W. Brown, Secretary of State
State of Ohio, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As you are aware, Amended Senate Bill 550 becomes effective on the 17th day of October, 1961. Since the purpose of this bill is to permit the incorporation of professional associations for the practice of particular named professions, including that of engineering, the question arises as to the construction of the Revised Code of Ohio.

“Specifically, we raise the following two questions:

- “1. Does Amended Senate Bill 550, by implication, modify or repeal sections 1701.03 and 4733.16 of the Revised Code of Ohio, in so far as it purports to permit incorporation of a professional association of engineers?
- “2. If your answer to the above question is affirmative, does Amended Senate Bill 550 further modify or repeal section

4733.16 so as to permit professional associations to adopt a corporate title to include the words "engineer" or "engineering" or some modification or derivation thereof?

"Your prompt opinion on these two questions is requested due to the necessity of prescribing the required forms and filing instructions."

Amended Senate Bill No. 550, to which you refer, enacts Chapter 1785., Revised Code, to permit the establishment of professional associations.. This bill will go into effect on October 17, 1961.

As to a professional association, Section 1785.02, Revised Code, provides :

"An individual or group of individuals each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state may organize and become a shareholder, or shareholders, of a professional association. Any such group of individuals who may be rendering a specific professional service as an organization created otherwise than pursuant to sections 1785.01 to 1785.08, inclusive, of the Revised Code may incorporate under and pursuant to the provisions of this act by amending the agreement establishing the organization in such manner that such agreement as amended shall constitute articles of incorporation prepared and filed in the manner prescribed in section 1785.08 of the Revised Code and by otherwise complying with the applicable requirements of sections 1785.01 to 1785.08, inclusive, of the Revised Code."

Regarding the meaning of "professional service," division (A) of Section 1785.01, Revised Code, reads :

"(A) 'Professional service' means any type of professional service which may be performed only pursuant to a license, certificate, or other legal authorization, as provided by Chapters 4701., 4703., 4705., 4715., 4725., 4729., 4731., 4733., and 4741. to certified public accountants, licensed public accountants, architects, attorneys, dentists, pharmacists, optometrists, physicians and surgeons, and practitioners of limited branches of medicine or surgery as defined in section 4731.15 of the Revised Code, professional engineers, and veterinarians."

That such an association may be incorporated under the Ohio corporation law, Chapter 1701., Revised Code, is demonstrated by Section 1785.08, Revised Code, reading :

"Chapter 1701. of the Revised Code shall be applicable to professional associations, including their organization and the manner

of filing articles of incorporation, except that the requirements of division (A) of section 1701.06 of the Revised Code shall not apply to professional associations. If any provision of sections 1785.01 to 1785.08, inclusive, of the Revised Code, conflicts with any provision of Chapter 1701. of the Revised Code, the provisions of sections 1785.01 to 1785.08, inclusive, of the Revised Code, shall take precedence.”

Considering your first question, service by professional engineers is specifically included in the definition of “professional service” as found in division (A) of Section 1785.01, *supra*. Also, professional engineers are licensed to practice in this state under Chapter 4733., Revised Code. Thus, unless precluded by either Section 1701.03 or Section 4733.16, Revised Code, to which you refer, an association of professional engineers may be incorporated under Chapter 1785., Revised Code.

Section 1701.03, *supra*, reads in part :

“A corporation may be formed for any purpose or purposes, other than for carrying on the practice of any profession, for which natural persons lawfully may associate themselves, provided that when there is a special provision in the Revised Code for the formation thereunder of a designated class of corporations, a corporation of such class shall be formed thereunder * * *.”

I believe that for the purposes of this section, the practice of professional engineering may be considered the practice of a profession.

Section 4733.16, Revised Code, reads in part :

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“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 derivation of such term except a nonprofit membership corporation.”

So far as each of the above sections prohibits the granting of a charter to practice professional engineering, such sections conflict with Chapter 1785., *supra*. As to Section 1701.03, *supra*, however, I am of the opinion that Chapter 1785., *supra*, as dealing with professional engineers, is a special provision such as is referred to in said Section 1701.03, Revised Code, and that, therefore, said Chapter is an exception to the prohibition of that section. Also, Section 1785.08, Revised Code, clearly

provides that if any provision of Sections 1785.01 to 1785.08, inclusive, Revised Code, conflicts with any provision of said Chapter 1701., the provisions of Sections 1785.01 to 1785.08, inclusive, Revised Code, shall take precedence. Thus, under said Section 1785.08, the provisions of Section 1701.03, *supra*, as to the conflict, and there appears to be no doubt that the provisions of Section 1701.03, *supra*, do not preclude the forming of a professional association to practice engineering under Chapter 1785., *supra*.

Referring to Section 4733.16, *supra*, the quoted language became law in 1943 (120 Ohio Laws, 145, 148), long before October 17, 1961, which is the effective date of Amended Senate Bill No. 550, *supra*. Thus, Chapter 1785., *supra*, enacted by the bill, is a later expression of the legislature on the subject of professional engineers than is said quoted language; and as a later expression, should take precedence over the earlier enacted language. In this regard, it is stated in 37 Ohio Jurisprudence, Section 135, starting at page 395:

“* * * If an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates without any repealing clause, as a repeal of the first *to the extent of the irreconcilable inconsistency*. Hence, it is a rule that later expressions of legislative will control where two statutes are in irreconcilable conflict. * * *” (Emphasis added)

In view of the foregoing, therefore, I am of the opinion that the provisions of Chapter 1785., *supra*, constitute an exception to the provisions of Section 1701.03, *supra*, and to the provisions of Section 4733.16, *supra*, where a conflict exists; and that a charter may be issued to a corporation to practice engineering so long as the charter is issued pursuant to that chapter.

Coming to your second question, Section 4733.16, *supra*, provides that no corporation shall “use or assume a name involving the word ‘engineer’ or ‘engineering’ or any modification or derivative of such term except a non profit membership corporation.” You ask whether a corporation formed pursuant to Chapter 1785., *supra*, may use such a name.

While, based on the doctrine of implied repeal, I have already concluded that Chapter 1785., *supra*, constitutes an exception to Section 4733.16, *supra*, as to the forming of a corporation to practice professional

engineering, I must note that such implied repeal applies only to the provision as to incorporation, because that is where the conflict exists. As stated in 37 Ohio Jurisprudence, Section 136, page 400 :

“* * * Lastly, it is to be borne in mind that the old statute is repealed only to the extent of the irreconcilable repugnancy, and not necessarily in its entirety.”

Chapter 1785., *supra*, makes no provision as to the use of any name by a professional association; and while Section 1785.08, *supra*, does provide that Chapter 1701., Revised Code, shall be applicable to professional associations, including their organization and the manner of filing articles of incorporation, no provision of said Chapter 1701. appears to be pertinent to the question. Section 1701.04, of that chapter, provides that the articles of incorporation of a proposed corporation shall set forth the name of the corporation, “which shall end with or include ‘company, Co., corporation, Corp., Incorporated, or Inc.’” Section 1701.05, Revised Code, provides that the secretary of state shall not accept a name which is likely to mislead the public or which would not be distinguished from the name of any other corporation; and provides that a particular name may be reserved for future use.

It appears, therefore, that there is no provision in Chapter 1785. or in Chapter 1701. which could be considered in conflict with the provisions of Section 4733.16, *supra*, as to the use of a name. Further, I am reluctant to imply any such conflict. As stated in 37 Ohio Jurisprudence, Section 140, page 401 :

“Repeals by implication are not favored and have even been declared to be ‘abhorred.’ They will not be indulged if there is any other reasonable construction.”

And in the same volume, Section 141, page 404 :

“* * * Indeed, it has been adjudged that repeals by implication only obtain where such seems to have been the obvious intention of the legislature. An enlarged meaning, beyond the import of the words, will not be given to one act in order to repeal another by implication. * * *”

I conclude, therefore, that although Chapter 1785., *supra*, authorizes the incorporation of a professional association of engineers, such corporation is precluded by Section 4733.16, *supra*, from using or assuming a name

involving the word “engineer” or “engineering” or any modification or derivative of such term.

Accordingly, it is my opinion and you are advised :

1. The provisions of Chapter 1785., Revised Code, enacted by Amended Senate Bill No. 550 of the 104th General Assembly, effective October 17, 1961, and authorizing the incorporation of a professional association of engineers, constitute an exception to the provisions of Sections 1701.03 and 4733.16, Revised Code, which sections prohibit the forming of a corporation to practice professional engineering.

2. A professional association of engineers, incorporated pursuant to Chapter 1785., Revised Code, is precluded by the terms of Section 4733.16, Revised Code, from using or assuming a name involving the word “engineer” or “engineering” or any modification or derivative of such term.

Respectfully,

MARK McELROY
Attorney General