

**OPINION NO. 81-080****Syllabus:**

1. The provisions of R.C. Chapter 4733 are applicable to employees of the State of Ohio. Employees of the Ohio Department of Transportation may, however, be exempt under R.C. 4733.18(C) from the provisions of R.C. 4733.01 to R.C. 4733.23, inclusive, as employees of a person holding a certificate of registration, provided that their training does not include responsible charge of design or supervision.
2. The word "engineer" may be used in a job classification title established for the purposes of R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03, even though some of the employees in the positions so classified are not registered professional engineers and are not exempt from the registration requirement, since such classifications are established for the internal administrative and fiscal purposes of the state. (1962 Op. Att'y Gen. No. 3000, p. 356, approved and followed.)
3. An employee of the State of Ohio who is in an "engineer" classification and who is exempt under R.C. 4733.18(C) from R.C. 4733.01 to R.C. 4733.23 may use a job title that contains the

word "engineer" in correspondence sent by him in connection with such position. (1962 Op. Att'y Gen. No. 3000, p. 356, distinguished.)

4. The word "engineer" may be used in a job classification title established for the purposes of R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03 even though the job duties and specifications for that classification include all, some, or none of the duties listed within the definition of "the practice of engineering."

---

**To: Richard W. Slehl, Chairman, State Employee Compensation Board, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 4, 1981**

I have before me your predecessor's request for my opinion concerning the classification of engineers employed by the State of Ohio. Your specific questions may be summarized as follows:

1. Are the provisions of R.C. Chapter 4733, particularly R.C. 4733.17 and R.C. 4733.18, applicable to employees of the Ohio Department of Transportation?
2. May the word "engineer" be used in a classification title where the job duties and specifications for the classification do not include all of the duties outlined in Chapter 4733 in the definition of the profession of engineering?
3. May the word "engineer" be used in a classification title for a group of positions in which some of the employees in those positions are not registered professional engineers?

R.C. Chapter 4733 regulates the practice of engineering in this state. For the purpose of R.C. Chapter 4733, the practice of engineering is defined in R.C. 4733.01(B) as follows:

"The practice of engineering" includes any professional service, such as consultation, investigation, evaluation, planning, design, or inspection of construction or operation, for the purpose of assuring compliance with drawings or specifications in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects in the proper rendering of which the qualifications of section 4733.11 of the Revised Code are required to protect the public welfare or to safeguard life, health, or property.

The provisions of R.C. Chapter 4733 generally restrict or limit persons. For example, R.C. 4733.02 provides that "[a]ny person practicing or offering to practice the professions of engineering or of surveying, shall submit evidence that he is qualified to practice and shall be registered." It further provides that:

No person shall practice or offer to practice the professions of engineering or of surveying. . . or 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.

Similarly, R.C. 4733.22 states that "[n]o person shall practice, or offer to practice, the profession of engineering or surveying without being registered or exempted in accordance with sections 4733.01 to 4733.23, inclusive, of the Revised Code. . . ." Thus, R.C. Chapter 4733 applies to all persons regardless of the status of a particular person's employer or client.

I am aware of no common law immunity that would automatically exempt employees of the State of Ohio from the provisions of R.C. Chapter 4733. Had the General Assembly intended to exempt employees of the State of Ohio from the registration requirements contained in R.C. Chapter 4733, it would have had to have done so expressly. See, e.g., R.C. 4733.18(D) (officers and employees of the United States government are exempt from registration while engaged in the practice of the profession of engineering for the federal government). See also 1981 Op. Att'y Gen. No. 81-055 (county hospital employees who "engage in the sale of, practice of dealing in, or fitting" of hearing aids must comply with the licensing provisions of R.C. Chapter 4747, unless such employees are exempt from licensure under R.C. 4747.15).

Your first question inquires about employees of the Ohio Department of Transportation. With respect to this question, you have asked me to consider the provisions of R.C. Chapter 5501, particularly R.C. 5501.12, R.C. 5501.13, R.C. 5501.14 and R.C. 5501.17.

R.C. 5501.12 authorizes the Director of Transportation to appoint a chief engineer in the division of highways, and requires the appointee to be a registered professional engineer. R.C. 5501.13 and R.C. 5501.14, respectively, contain a similar authorization and requirement for the appointment of assistant deputy directors and district deputy directors. R.C. 5501.17 generally empowers the Director of Transportation to employ such assistants, clerks, stenographers, engineers, inspectors, technicians and other employees as are necessary to carry out his duties.

In my opinion, the application of R.C. Chapter 4733 to employees of the Ohio Department of Transportation is not incompatible with the provisions of the aforementioned statutes. The fact that certain employees of the Department are required to be registered professional engineers does not necessarily imply that no other employee need be similarly registered. Nor does the fact that R.C. 5501.17 uses the term "engineers" instead of "registered professional engineers" exempt persons employed by the Department from registration, if such persons are engaged in "the practice of engineering" as defined in R.C. 4733.01(B).

Accordingly, it is my opinion that the provisions of R.C. Chapter 4733 are applicable to persons employed by the State of Ohio, including those employed by the Ohio Department of Transportation.

I note, however, that among the provisions set forth in R.C. Chapter 4733 is R.C. 4733.18, which provides:

The following persons shall be exempt from sections 4733.01 to 4733.23, inclusive, of the Revised Code:

. . .

(C) An employee or a subordinate of a person holding a certificate of registration or an employee of a person exempted from registration by divisions (A) and (B) of this section; provided his training does not include responsible charge of design or supervision. . . .

Thus, since each employee of the Department of Transportation is an employee or a subordinate of the Director of Transportation and one of the various assistant deputy directors or district deputy directors, all of whom are required to hold a certificate of registration, an employee of the Department may be exempt from R.C. 4733.01 to R.C. 4733.23, inclusive, provided his training does not include responsible charge of design or supervision.

Your next two questions concern the circumstances under which the word "engineer" may be used in a classification title. I assume that by using the term "classification title" your predecessor intended to reference the state's job

classification plan established pursuant to R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03.

In 1962 Op. Att'y Gen. No. 3000, p. 356, one of my predecessors had occasion to consider whether a person employed by a municipality could be given a title which included the word "engineer" even though the employee was not registered under R.C. Chapter 4733. My predecessor opined, at 359, that:

As to the use of the term, Civil Engineer, by the municipality to designate a position and wage classification, I have been unable to find any statute or court determination that would expressly preclude the use of such classification. It would appear that the use of such phrase by the public officer charged with the making of classifications would not in and of itself be a violation of Section 4733.02, *supra*, since it is likely that such use by such officer is not to give the impression that he is an engineer, but is for internal administrative and fiscal purposes of the municipality. Therefore, it is my opinion that while such designation tends toward confusion, its use by the municipality is not illegal.

I concur in my predecessor's analysis. In response to your third question, it is, therefore, my opinion that the word "engineer" may be used in a job classification title established for the purposes of R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03, even though some of the employees in the positions so classified are not registered professional engineers and are not exempt from the registration requirement, since such classifications are established for the internal administrative and fiscal purposes of the state.

With respect to your second question, it is my opinion that it is immaterial whether the job duties and specifications for an "engineer" classification include all, some, or none of the duties listed within the definition of the "practice of engineering," again because such classification is being used solely for the internal administrative and fiscal purposes of the state. Of course, any employee who is actually engaging in the practice of engineering must be either registered as a professional engineer or exempt from such registration.

Having adopted a portion of the reasoning set forth in 1962 Op. No. 3000, I should reconcile the main conclusion set forth therein with my response to your first question. 1962 Op. No. 3000 concludes, at 360, that:

[A] municipal employee who is not registered under Chapter 4733., Revised Code, and who was hired by the municipality under a position and wage classification designated, "Civil Engineer," violates the provisions of Section 4733.02, Revised Code, when he uses such designation after his name in correspondence sent by him in connection with such position, and such individual may be charged with a misdemeanor under the provisions of Section 4733.22, Revised Code, and if found guilty, would be subject to the penalty found in Section 4733.99, Revised Code. (Opinion No. 6467, Opinions of the Attorney General for 1936, page 1706, approved and followed.)

In reaching this conclusion my predecessor presumed "that the persons in question are not exempt from the provisions of Chapter 4733., Revised Code."

In response to your first question, I concluded that state employees may be exempt from the provisions of R.C. Chapter 4733 and R.C. 4733.18(C). If such exemption applies and the employee's classification title contains the word "engineer," there is no prohibition against the employee using such title in correspondence sent by him in connection with such position.

Accordingly, in specific response to your questions, it is my opinion, and you are advised, that:

1. The provisions of R.C. Chapter 4733 are applicable to employees of the State of Ohio. Employees of the Ohio Department of Transportation may, however, be exempt under R.C. 4733.18(C) from the provisions of R.C. 4733.01 to R.C. 4733.23, inclusive, as employees of a person holding a certificate of registration, provided that their training does not include responsible charge of design or supervision.
2. The word "engineer" may be used in a job classification title established for the purposes of R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03, even though some of the employees in the positions so classified are not registered professional engineers and are not exempt from the registration requirement, since such classifications are established for the internal administrative and fiscal purposes of the state. (1962 Op. Att'y Gen. No. 3000, p. 356, approved and followed.)
3. An employee of the State of Ohio who is in an "engineer" classification and who is exempt under R.C. 4733.18(C) from R.C. 4733.01 to R.C. 4733.23 may use a job title that contains the word "engineer" in correspondence sent by him in connection with such position. (1962 Op. Att'y Gen. No. 3000, p. 356, distinguished.)
4. The word "engineer" may be used in a job classification title established for the purposes of R.C. 124.14 and 1 Ohio Admin. Code 123:1-7-03 even though the job duties and specifications for that classification include all, some, or none of the duties listed within the definition of "the practice of engineering."