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A MUNICIPAL EMPLOYEE NOT REGISTERED WITH THE STATE AS AN ENGINEER CLASSIFIED AS A "CIVIL ENGINEER" VIOLATES SECTION 4733.02, R.C. IF HE USES SAID TITLE AFTER HIS NAME IN CORRESPONDENCE—§§4733.02, 4733.23, R.C. OPINION 6467 OAG 1936.

SYLLABUS:

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.)

Columbus, Ohio, May 17, 1962

State Board of Registration for Professional Engineers & Surveyors
21 West Broad Street, Columbus 15, Ohio

Gentlemen:

I have your request for my opinion which reads as follows:

"The City of Hamilton, Ohio, has recently adopted a revised position and wage classification in which a change was made from Engineering Aide IV to Civil Engineer I. A copy of the qualifications is attached. The present incumbent *is not* a Registered Professional Engineer and *he does* mail correspondence signed as Civil Engineer.

"We respectfully request an opinion from your department as to the legality of a non-registered man being classified with such a title in public service.

"In our opinion the title is misleading and being used with the intent to indicate a status which does not exist."

For the purpose of this opinion, I shall presume that the persons in question are not exempt from the provisions of Chapter 4733., Revised Code.

The use of a title tending to convey the impression that a person not registered under Chapter 4733., Revised Code, is an engineer, is prohibited by the provisions of Section 4733.02, Revised Code, which section reads as follows:

"Any 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. 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."

The provisions of Section 4733.02, *supra*, were formerly found in Section 1083-1, General Code, and said provisions were considered by one of my predecessors in Opinion No. 6467, Opinions of the Attorney General for 1936, page 1706, the syllabus of which reads as follows:

“Under the provisions of Section 1083-1, et seq., General Code, a person who has not been duly licensed as a registered professional engineer, may not advertise in the State of Ohio that he is a civil engineer or make use of some other similar title.”

In arriving at the above conclusion my predecessor said beginning at page 1708 of Opinion No. 6467, *supra*:

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“Legislation similar to this license law has been uniformly upheld as a proper exercise of police power. No doubt the Legislature felt that in the interest of the safety of the general public, not only the actual practice of engineering should be regulated but also the public should be protected from persons who hold themselves out as engineers. In other words, the public should be protected from the possibility of deception by unlicensed persons.

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“While it is true, as stated in the letter addressed to you, that the individuals in question do not use the word ‘professional’, it is nevertheless the intent of the person who calls himself, for example, ‘civil engineer’ and inserts his name with such title, in a telephone directory to convey the impression that he is a ‘professional civil engineer’. It is rather difficult to imagine why a person would list himself in a telephone directory as a ‘civil engineer’ unless he intended to convey the impression that he was a professional engineer and would practice such profession if called upon to do so. In fact, it is an invitation to the public that his professional services are for hire. In any event the language of Section 1083-1 is very broad and it can be safely said that the Legislature intended to prevent anyone conveying the idea that he is a professional engineer, unless he is duly licensed as such, under the provisions of Sections 1083-1, et seq., General Code. It would seem that the examples mentioned in your letter violate not only the spirit but the letter of the law as expressed in Section 1083-1, General Code.

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I am of the opinion that the reasoning and conclusion found in said Opinions 6467 are sound, and applying such conclusions to the facts set forth in your letter I believe that the use of the term Civil Engineer after the signature of a municipal employee would tend to convey the impression that he is an engineer duly registered under Chapter 4733., Revised Code. Such use would accordingly violate the provisions of Section 4733.02, *supra*, and a person violating such provisions can be

criminally charged with a misdemeanor under the provisions of Section 4733.22, Revised Code, and if convicted thereunder, the penalty found in Section 4733.99, Revised Code, may be imposed.

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 am certain that the municipal officers in question are aware that the Legislature has provided for the appointment of a Civil Engineer by certain municipalities, as well as for the performances of other municipal duties by persons who would be amenable to Chapter 4733., Revised Code. In this connection, your attention is called to 44 Ohio Jurisprudence 2d, page 147, Professional Engineers, Section 3, which reads as follows:

“Specific provision is made, in the Code provisions as to municipal corporations, with respect to the duties and compensation of a civil engineer, which office exists only by virtue of an ordinance providing therefor and may be abolished by the repeal of the ordinance. Statutory provision is also made for the employment of an engineer by the director of public service of a city when acting as the platting commissioner.

“The Code makes provision for plats of proposed villages or additions to municipal corporations by a competent surveyor; what the plat shall contain; the planting of cornerstones; and the duty of the surveyor to certify, and of the owner to acknowledge, the plat, and the recording and approval thereof. The Code also provides for the appointment of a surveyor by the board of county commissioners to replat municipal corporations where records are lost or destroyed; the recording of such plat and certificate; and compensation for such services.”

Your attention is also called to the provisions of Section 4733.23, Revised Code, which reads, in pertinent part, as follows:

“All officers of the law of this state, or of any political subdivision thereof, shall enforce sections 4733.01 to 4733.22, inclu-

sive, of the Revised Code, and prosecute any persons violating same. * * *

It will be seen from the above quoted statutory language that the law enforcement officials of the municipality in question are in the instant situation charged with the responsibility of enforcing the provisions of Chapter 4733., Revised Code, against the activities of other employees of said municipality in using their position and wage designation, "Civil Engineer," after their names in connection with their duties. This unwieldily situated can, of course, be simply cured by the municipality by changing the position and wage classification in question and by prohibiting the use of the designation, "Civil Engineer," by unregistered employees.

In accordance with the above, I am of the opinion and you are advised 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.)

Respectfully,

MARK McELROY

Attorney General