

OPINION NO. 86-009**Syllabus:**

1. The act of certifying building plans is a professional service which constitutes the practice of engineering for purposes of R.C. 4733.01(B).
2. A county engineer who has chosen under R.C. 325.14(B)(2) not to engage in the private practice of engineering or surveying may not, for remuneration, engage in the practice of certifying building plans for a private manufacturing firm, regardless of the capacity or location in which he serves.

To: James S. Rapp, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 20, 1986

I have before me your request for my opinion regarding the interpretation of R.C. 325.14(B)(2). You have asked whether a county engineer who has chosen, pursuant to R.C. 325.14(B)(2), not to engage in the private practice of engineering or surveying, may certify building plans for a private manufacturing firm, in various locations and/or in various capacities, and receive remuneration therefor. Specifically, you would like to know if such a county engineer may certify building plans in a private capacity:

- (a) In the State of Ohio;
- (b) In states other than Ohio;
- (c) As an employee of a manufacturing firm; or
- (d) As a shareholder and/or director of a manufacturing firm.

In order to answer your question, I must examine R.C. 325.14, which establishes the compensation of a county engineer. R.C. 325.14(B)(2) provides that a county engineer who elects not to engage in the private practice of engineering or surveying shall receive a higher salary than he would have received if he had elected to engage in such practice. See 1985 Op. Att'y Gen. No. 85-100. R.C. 325.14(B) states in part:

A county engineer may elect to engage or not to engage in the private practice of engineering or surveying before the commencement of each new term of office, and a county engineer who elects not to engage in the private practice of engineering or surveying may, for a period of six months after taking office, engage in the private practice of engineering or surveying for the purpose of concluding the affairs of his private practice without any diminution of his salary....

This provision permits a county engineer who has chosen not to engage in the private practice of engineering or surveying to so engage, "for a period of six months after taking office," so that he may "conclud[e] the affairs of his private practice." I assume that your question does not relate to activities which come within this exception.

Your letter indicates that the county engineer has chosen, pursuant to R.C. 325.14(B)(2), not to engage in the private practice of engineering or surveying. He would, however, like to continue to certify building plans for a private manufacturing firm, for remuneration, as a licensed engineer, but not in his official capacity as county engineer. The issue to be determined, then, is whether the act of certifying building plans for a private manufacturing firm constitutes the private practice of engineering or surveying for purposes of R.C. 325.14(B)(2). You have indicated that the county engineer would receive remuneration for such services from the private firm. Therefore, I will limit my discussion to instances in which the county engineer is so compensated.

R.C. 315.02 requires that a county engineer be a registered professional engineer and a registered surveyor, licensed to practice in Ohio. R.C. Chapter 4733 governs the registration of professional engineers and surveyors. The practice of engineering is defined in R.C. 4733.01(B), for purposes of R.C. 4733.01-.23, 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. (Emphasis added.)

In Op. No. 85-100, I considered the application of this definition to the provisions of R.C. 325.14(B), as follows:

According to [the] definition [appearing in R.C. 4733.01(B)], the practice of engineering includes professional services of the sort listed (i.e., "consultation, investigation, evaluation, planning, design, or inspection of construction or operation"), to assure compliance with drawings or specifications in connection with certain types of undertakings (i.e., "public or privately owned public utilities, structures, buildings, machines, equipment, processes,

works, or projects") for which, in order to protect the public welfare or to safeguard life, health, or property, it is necessary that an individual have the qualifications set forth in R.C. 4733.11 as requirements for registration as a professional engineer. The underlying reason for requiring the registration of professional engineers is to regulate engineering which concerns the safeguarding of life, public health, or property. See Ohio Society of Professional Engineers v. Hulslander, 86 Ohio App. 497, 89 N.E.2d 119 (Cuyahoga County 1949); Fanning v. College of Steubenville, 31 Ohio Op. 2d 495, 197 N.E.2d 422 (C.P. Jefferson County 1961), appeal dismissed, 174 Ohio St. 343, 189 N.E.2d 72 (1963).

The definition appearing in R.C. 4733.01(B) sets forth certain types of professional services which are included within the practice of engineering. "Consultation, investigation, evaluation, planning, design, [and] inspection of construction or operation" are specifically named.... The General Assembly's use of the words "such as" indicates that other similar types of services may also be included within the definition of the practice of engineering. See The Random House Dictionary of the English Language 1420 (unabridged ed. 1973) (defining "such as" to mean "of the kind specified...for example"). See generally State v. Aspell, 10 Ohio St. 2d 1, 4, 225 N.E.2d 226, 228 (1967) (under the legal maxim eiusdem generis, which means "of the same kind or species," where a statute uses terms which are confined to a particular class of objects and then a term which may have a broader meaning, the latter term is "to be considered as embracing only things of a similar character as those comprehended by the preceding limited and confined terms" (citations omitted)); Myers v. Seaberger, 45 Ohio St. 232, 236, 12 N.E. 796, 798 (1887) ("it is a settled rule of construction that, in accordance with the maxim noscitur a sociis, the meaning of a word may be ascertained by the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense" (citation omitted)).

Your question raises the issue whether the act of certifying building plans, for compensation, is included within the private practice of engineering or surveying for purposes of R.C. 4733.01(B). The word "certify" is defined in Black's Law Dictionary 207 (5th ed. 1979), as: "[t]o authenticate or vouch for a thing in writing. To attest as being true or as represented." Certifying building plans is not expressly included in R.C. 4733.01(B) as one of the professional services that constitutes the practice of engineering. It appears, however, that when a professional engineer certifies building plans he is attesting that they are "true or as represented," and, therefore, the act of certifying building plans reflects the professional engineer's evaluation of those plans. Such an act appears, further, to be part of the process of "assuring compliance with drawings or specifications in connection with" those types of undertakings enumerated in R.C. 4733.01(B). For example, R.C. 3781.10(E) permits a municipal, township or county building department which is certified by the State Board of Building Standards to exercise enforcement authority, to accept and approve plans and specifications, and to make

inspections. If such a building authority does not have personnel who are certified to do plan and specification review, plans and specifications submitted to the building department may be approved if, inter alia, they contain a written certification by an architect or professional engineer indicating that the plans and specifications conform to the requirements of the Ohio building code, see 5 Ohio Admin. Code 4101:2-1-01 (designating 5 Ohio Admin. Code Chapters 4101:2-1 through 4101:2-51 as the Ohio Basic Building Code), and R.C. Chapter 3781 and 3791, which deal with building standards. R.C. 3791.042. See also R.C. 3791.04. Under the legal maxim eiusdem generis, then, the act of certifying building plans should be included within R.C. 4733.01(B), through the phrase "such as," because the act of certifying building plans is similar in character to the professional services enumerated in R.C. 4733.01(B). The certification of building plans, therefore, qualifies as a professional service, as that term is defined in R.C. 4733.01(B). Cf. Op. No. 85-100 (concluding that a county engineer who chose not to engage in the private practice of engineering or surveying was permitted to teach a class on engineering because "teaching" was not a professional service included within R.C. 4733.01(B) and, therefore, teaching was not within the practice of engineering or surveying for purposes of R.C. 325.14(B)(2)). Consequently, a county engineer who is paid to certify building plans in a capacity other than that of county engineer is engaged in the private practice of engineering for purposes of R.C. 325.14(B)(2).

You have asked whether a county engineer who has chosen not to engage in the private practice of engineering or surveying may certify building plans for a private manufacturing firm in various locations or various capacities. The language of R.C. 325.14(B)(2) provides no exceptions that would permit a county engineer who has chosen not to engage in the practice of engineering or surveying to so engage, while acting in a capacity other than as county engineer, regardless of the location in which he practices. It is my judgment that the language of R.C. 325.14(B)(2) must be read literally to apply to any practice of engineering or surveying, regardless of where, or in what capacity, a county engineer engages in such practice.

I am aware that R.C. Chapter 4733 regulates the practice of engineering and surveying only in Ohio. I am also aware that R.C. 4733.18(B) lists several exemptions from registration requirements, inter alia: (1) an engineer is exempt if he is engaged solely as an officer of a corporation engaged in interstate commerce, R.C. 4733.18(B)(3); (2) the practice of professional engineering or surveying by a corporation, on property owned or leased by that corporation, is exempt where such practice does not involve the public welfare or the safeguarding of life, health, or property, R.C. 4733.18(B)(4); and (3) the performance of engineering or surveying which relates solely to the design or fabrication of manufactured products is exempt, R.C. 4733.18(B)(4). See also 1981 Op. Att'y Gen. No. 81-080. The language of R.C. 325.14(B)(2) concerning the private practice of engineering or surveying does not, however, limit its applicability to activities for which registration is required under R.C. Chapter 4733. Rather, it relates generally to any private practice of engineering or surveying. It is clear that the practice of engineering or surveying may be carried on outside the State of Ohio. Further, the fact that R.C. 4733.18(B) creates exceptions for the types of engineering described therein

indicate a recognition of the fact that these activities fall within the practice of engineering, but are merely exempt from registration. It is my judgment that a county engineer who elects under R.C. 325.14(B)(2) not to engage in the private practice of engineering or surveying may not, for compensation, perform any professional services which are included within the practice of engineering or the practice of surveying, as those terms are used in R.C. Chapter 4733, in any capacity or in any location, even though such services might be performed outside the State of Ohio by a person who is not registered under R.C. Chapter 4733, or within the State of Ohio by a person who is exempted from the registration requirements of R.C. Chapter 4733.

It is, therefore, my opinion, and you are hereby advised, that:

1. The act of certifying building plans is a professional service which constitutes the practice of engineering for purposes of R.C. 4733.01(B).
2. A county engineer who has chosen under R.C. 325.14(B)(2) not to engage in the private practice of engineering or surveying may not, for remuneration, engage in the practice of certifying building plans for a private manufacturing firm, regardless of the capacity or location in which he serves.