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SURVEYOR, REGISTERED—PERSON UNDER TERMS OF ACT TO PROVIDE A STATE BOARD OF ENGINEERS AND SURVEYORS BUT NOT REGISTERED AS PROFESSIONAL ENGINEER, CAN NOT LEGALLY DISCHARGE POWERS AND DUTIES OF OFFICE, ENGINEER OF MUNICIPALITY—SECTIONS 1083-1 ET SEQ., 4364, 4366 G. C.

SYLLABUS:

A person who is a registered surveyor under the terms of the act providing for a state board of engineers and surveyors, Section 1083-1 et seq., General Code, but lacking registration thereunder as a professional engineer, cannot legally discharge the powers and duties of the office of engineer of a municipality as defined by Sections 4364 and 4366, General Code.

Columbus, Ohio, March 2, 1948

State Board of Registration for Professional Engineers and Surveyors
Columbus, Ohio

Gentlemen :

Your request for my opinion, after directing attention to Sections 1083-1 and 1083-2, General Code, reads as follows :

“In view of the foregoing provisions of Ohio Law the question arises as to whether an individual who is a registered surveyor, but who is not a registered professional engineer, can legally discharge the duties of a City Engineer, since his duties fall within the language of Section 1083-2, General Code.”

It will be assumed that in referring to a “City Engineer” you had in mind the office with respect to which it was held in the second branch of the syllabus in *Wright v. Clark*, 119 O. S. 462, to-wit :

“Sections 4364 and 4366, General Code, create the office of engineer of a municipality and define the powers and duties of such office.”

Section 4364, General Code (96 O. L. 84), which has been in force and effect in its present form for many years, provides :

“Under the direction of council, the street commissioner, or an *engineer*, when one is so provided by council, shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wards, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water sources. Such commissioner or *engineer* shall also supervise the lighting, sprinkling and cleaning of all public places, and shall perform such other duties consistent with the nature of his office as council may require.” (Emphasis added.)

Section 4366, General Code (Revised Section 1782), has also been in effect in its present form for a considerable period of time and reads :

“In each municipal corporation having a fire engineer, *civil engineer* or superintendent of markets such officers shall each perform the duties prescribed by this title and such other duties not incompatible with the nature of his office as the council by ordinance requires, and shall receive for his services such compensation by fees, salary or both as is provided by ordinance.”
(Emphasis added.)

In view of the fact that the sections just noted now read exactly the same as they read at the time the court decided *Wright v. Clark*, supra, the principle of law incorporated in the second branch of the syllabus thereof must be regarded as presently of controlling effect.

Attention will now be called to the act creating the state board of registration for professional engineers and surveyors and providing for the regulation of the practice of professional engineering and surveying. Said act, which became effective September 28, 1933 (115 O. L. 355), was heretofore codified as Sections 1083-1 to 1083-26 of the General Code. The purpose of said act is set forth in Section 1083-1, General Code, which provides:

“That in order to safeguard life, health, and property, any person practicing or offering to practice the professions of engineering or of surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice the professions of engineering or of surveying, in this state, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a surveyor, *unless such person has been duly registered or exempted under the provisions of this act.*”

(Emphasis added.)

By virtue of Section 1083-2, General Code, the practice of professional engineering and of surveying is therein defined. Said section provides in part:

“* * * The practice of professional engineering within the meaning and intent of this act includes any professional service, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation, in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare, or the safeguarding of life, public health or property is concerned or involved, when such professional service requires the application of engineering principles and data. * * *

“The practice of surveying, within the meaning and intent of this act, shall be held to mean that branch of engineering and applied mathematics which teaches the art of surveying and measuring the area of any portion of the earth’s surface, the lengths and directions of the bounding lines, the contour of the surface, for their correct determination and description and for conveyancing, or for recording, or for the establishment or re-

establishment of land boundaries and the plotting of lands and subdivisions thereof; and like measurements and operations involved in the surveying of mines, and commonly known as 'mine surveying.' * * *

Section 1083-13, General Code, prescribes the requirements that must be met for registration as a professional engineer or as a surveyor. Section 1083-14, General Code, fixes the fee for registration as a professional engineer at \$15.00 and a like amount is charged for registration as a surveyor. Provision being made for separate registration, it cannot be seriously urged that, although surveying may be a branch of engineering, a registered surveyor is legally entitled to practice professional engineering as defined by law.

There is no specific requirement in either Section 4364, General Code, or Section 4366, General Code, that the "engineer" therein provided for must be registered since, as has been pointed out, these sections came into existence long before the passage of the act here being considered. Hence there remains for consideration the matter of whether the statutory duties of a municipal engineer are such as to constitute the practice of engineering as now defined by law. Collaterally involved is the further question as to whether the office of municipal engineer has been specifically exempted from the operation of said act. In respect of the second matter Section 1083-20, General Code, provides *inter alia* :

"The following persons shall be exempt from the provisions of this act, to-wit: * * *

"(d) Officers *and employees* of the government of the United States while engaged within this state in the practice of the profession of engineering or surveying, for said government.

"(e) All elective officers of the political subdivision of the state while in the practice of professional engineering or surveying in the performance of their official duties, unless otherwise required by law. * * *"
(Emphasis added.)

It is noteworthy that in the case of the government of the United States the exemption extends to officers *and employees*. Employees are not mentioned in paragraph "e" above noted. Said exemption extends solely to elective officers of a political subdivision of the state. No occasion exists to consider the "or otherwise" provision in this just noted paragraph.

There will now be considered the matter of whether the duties that are set forth in said Sections 4364 and 4366 of the General Code are of such a nature as to require one holding the office therein provided for to engage in the practice of engineering. It is particularly pertinent that in Section 4366, General Code, reference is made to a "civil engineer". Touching on the proposition here involved is an opinion of one of my predecessors, which will be found in Opinions of the Attorney General for 1935, Vol. II, page 1504. Consideration was given therein to supplemental Section 2782-1, General Code (116 O. L. 283), as effective August 8, 1935, which section reads:

"The title of county surveyor shall be changed to that of county engineer. Wherever the words 'county surveyor' are found in any section of the General Code, not herein amended or repealed, they shall, after the taking effect of this act, be read 'county engineer.'"

At the same time and by virtue of the same act Section 2783, General Code, was amended to read as follows:

"No person holding the office of clerk of court, sheriff, county treasurer or county recorder, shall be eligible to the office of county engineer. In all counties no person shall be eligible as a candidate for the office of county engineer or be elected or appointed thereto, except a registered professional engineer and registered surveyor licensed to practice in the state of Ohio."

It is significant that Sections 2792 and 2793 of the General Code, which now define the duties of the "County Surveyor", remained unchanged. See also Section 7181 et seq., General Code, which relate to the duties of the present County Engineer.

During the course of his aforesaid opinion the Attorney General for 1935, after referring to said Sections 2792 and 2793 of the General Code, stated:

"* * * It is apparent from the reading of the above sections that the performance of the statutory duties of a county engineer involves the practice of professional engineering. By Section 2793, General Code, supra, he shall perform 'all necessary services to be performed by * * * a civil engineer'. Even in the absence of such an express statutory provision, from a recital of the duties appertaining to his office, it appears that an extensive knowledge of the principles of engineering and the proper application thereof, are involved in the performance of the duties of what was formerly designated as a 'county surveyor'. * * *"

It is not difficult to formulate the conclusion that the duties set forth in Sections 4364 and 4366 of the General Code, will necessitate the rendition of services customarily performed by a registered professional engineer. The observation of my aforesaid predecessor could well be regarded as equally applicable to the sections just noted. Furthermore it is quite apparent that a registered surveyor cannot legally discharge such duties.

In specific answer to your inquiry it is therefore my opinion, and you are so advised, that a person who is a registered surveyor under the terms of the act providing for a state board of engineers and surveyors (Section 1083-1 et seq., General Code), but lacking registration thereunder as a professional engineer, cannot legally discharge the powers and duties of the office of engineer of a municipality as defined by Sections 4364 and 4366, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.