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1. REGISTRATION OF INDIVIDUALS AS PROFESSIONAL ENGINEERS AND SURVEYORS—PERSON TEMPORARILY EXEMPT FROM PROVISIONS OF ACT—REQUIRED TO TAKE FIRST EXAMINATION HELD BY STATE BOARD OF ENGINEERS AND SURVEYORS AFTER EXEMPTION—SECTIONS 1083-1 ET SEQ., 1083-20b G. C.
2. WHERE APPLICANT TAKES FIRST EXAMINATION HELD IMMEDIATELY AFTER EXEMPTION BUT FAILS TO SECURE PASSING GRADE, RIGHT OF EXEMPTION TERMINATES—NO EXTENSION TO TIME OF TAKING A FURTHER EXAMINATION.

## SYLLABUS:

1. A person who, by virtue of paragraph "b" of Section 1083-20, General Code, is temporarily exempt from the provisions of the act providing for the registration of individuals as professional engineers (Section 1083-1, et seq., General Code) is required to take the first examination that is held by the state board of engineers and surveyors after being exempted pursuant to said Section 1083-20, General Code.

2. Where such person takes the first examination that is held immediately after being exempted but fails to secure a passing grade such right of exemption thereupon terminates and may not be extended to the time of the taking of some further examination.

Columbus, Ohio, January 3, 1949

Mr. Robert N. Waid, Secretary, State Board of Registration for Professional Engineers and Surveyors

Columbus, Ohio

Dear Sir :

Your request for my opinion reads :

"Your opinion is respectfully requested regarding the following provision of the Professional Engineers and Surveyors Registration Law :

"Section 1083-20(b) provides for the exemption of a person who has recently become a resident of Ohio and states, 'Such exemption shall continue only for such time as the board requires for the consideration of the application for registration.'

"In the case of an applicant who becomes a resident of Ohio, who has been registered as a Professional Engineer *without examination* in the state of his previous residence, the Board requires him to secure his registration in Ohio by passing the regular examination as provided in Section 1083-13 for persons applying subsequent to January 1, 1946. The Board has considered that such an applicant was exempt from the provisions of the Registration Law until he had opportunity to take the next examination conducted by the Board following the filing of his application.

"The questions relative to the exemption provisions are :

"(1) Is the applicant exempt for a longer period than to the time of the first examination after he applies, providing he prefers to wait for a future examination beyond the first one for which he is eligible?

"(2) If the applicant takes the first examination and fails to secure a passing grade, may his exemption be extended to the time of a second or third examination providing he notifies the Board that he intends to try the examination again at the first opportunity?"

Section 1083-20, General Code, provides in part as follows :

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

"\* \* \* (b) A person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein

for more than sixty days in any calendar year the profession of engineering or surveying, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this act. *Such exemption shall continue only for such time as the board requires for the consideration of the application for registration*; provided, that such a person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. \* \* \*

(Emphasis added.)

Reference will next be made to Section 1083-13, General Code, which provides in part as follows:

"The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or surveyor, respectively, to wit: \* \* \*

"Every person applying subsequent to January 1, 1946, for a certificate of registration as a professional engineer or surveyor shall be required to pass a written or written and oral examination prescribed by the board. In addition to passing the requisite examination he must submit evidence, satisfactory to the board, that he has completed the eight years of training and active practice or eight years of active practice required in section 1083-13, sub-paragraphs 1 (a) or (b), or 2 (a) or (b), or section 1083-21 of the General Code."

In the consideration of your inquiry it has been observed that, so far as concerns the persons referred to in Section 1083-20, General Code, your board "has considered such an applicant was exempt from the provisions of the Registration Law *until he had an opportunity to take the next examination.*" (Emphasis added.) It can be agreed that the section in question indicates exemption shall continue only for such time as the board "requires for the consideration of the application for registration." It logically ensues that an application for admission to an examination would have to be considered *before* an examination could be held. Moreover I do not understand that such examination must be held *immediately* following the consideration of an application. It is entirely conceivable, therefore, that a period of several days or possibly several weeks might elapse between such consideration and the actual holding of the examination. Can it reasonably be asserted it was the legislative intent that, during such interval, the applicant who is temporarily entitled to exemption by virtue of Section 1083-20, General Code, would lose such right

of exemption during the period of time between the consideration of his application and the holding of an examination? My view of the matter is to the effect that, on the above considerations, your interpretation of the section in question is reasonable and proper. This brings me, then, to your first question.

Section 1083-13, General Code, cannot be construed as vesting in a person who is exempted under paragraph "b" thereof any choice in the matter of whether he will take the first examination that is held after so exempted or whether he will take some future examination. It was hardly the legislative intent that a person should be permitted to practice professional engineering in this state for some extended period of time without demonstrating his qualifications so to do by taking an examination. There is nothing harsh in holding that such first examination must be taken. To hold otherwise would, in effect, place a person "who has recently become a resident" of this state in a more favorable position than a person who has long resided in this state. Certain it is that the section in question should not be so interpreted.

Your second question should be considered in the light of the provisions of Section 1083-15, General Code, which reads:

"When oral or written examinations are required, they shall be held at such time and place as the board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in professional engineering and in surveying. A candidate failing in one examination may apply for re-examination within six months and will be re-examined *at the next regularly scheduled examination without payment of additional fee.* Subsequent examinations will be granted upon payment of a fee to be determined by the board, and which shall not exceed in amount the original fee. At least two (2) regularly scheduled examinations shall be held annually, in the months of January and July, respectively, and at such other times as determined by the board." (Emphasis added.)

It would appear that any applicant is entitled to take a second examination "at the next regularly scheduled examination" without paying any additional fee. The matter of whether such applicant was theretofore exempted is not of particular importance so far as concerns his right to

such second examination. I cannot bring myself to the view, however, that a person who was theretofore exempted, if he fails said examination when initially taken, should be permitted to engage in the practice of professional engineering whereas one who has long resided in this state and failed said examination is not entitled to practice engineering. Here again there is nothing harsh in adopting this view. Why should a person who recently became a resident of this state be given what would seem to be preferential treatment? It is conceivable that, in the case of an exempted person, he could continue to practice professional engineering merely by taking repeated examinations. He might never demonstrate his fitness to be registered. While this, perhaps, is carrying the matter to an extreme, that would nevertheless be the situation. It cannot be said that the law was designed to permit of such a situation.

In specific answer to your several questions you are therefore advised as follows:

1. A person who, by virtue of paragraph "b" of Section 1083-20, General Code, is temporarily exempt from the provisions of the act providing for the registration of individuals as professional engineers (Section 1083-1, et seq., General Code) is required to take the first examination that is held by the state board of engineers and surveyors after being exempted pursuant to said Section 1083-20, General Code.

2. Where such person takes the first examination that is held immediately after being exempted but fails to secure a passing grade such right of exemption thereupon terminates and may not be extended to the time of the taking of some further examination.

Respectfully,

HUGH S. JENKINS,  
Attorney General.