

Note from the Attorney General's Office:

1972 Op. Att'y Gen. No. 72-108 was overruled in part by
1999 Op. Att'y Gen. No. 99-053.

OPINION NO. 72-108

Syllabus:

1. The State Board of Registration for Professional Engineers and Surveyors has the authority, under Chapter 4733, Revised Code, to make the determination of the types of services which shall be intrinsic to the practice of engineering, and which services shall be intrinsic to the practice of surveying.

2. A county engineer, or a city engineer, or any public official of any political subdivision of this state, who, as part of his responsibility to that jurisdiction, is required to review engineering or surveying plans, designs, or specifications of a public work, costing in excess of \$5,000, for compliance with the applicable codes and regulations, has the authority to reject surveying plans, designs, and specifications which have been certified by other than a registered surveyor, and to reject engineering plans, designs, or specifications which have been certified by other than a professional engineer.

To: Charles B. Sloan, Exec. Sec., State Board of Registration for Professional Engineers and Surveyors, Columbus, Ohio

By: William J. Brown, Attorney General, November 22, 1972

I have before me your request for my opinion, which provides as follows:

"Questions have been posed to this Board in the area of certain services involving Engineering and Surveying skills, but which services, because of the education, training and experience required, should, in the opinion of the Board, and in the public interest, be rendered exclusively by one or the other profession; further, whether an officer of a political subdivision of the State, or of a municipality, may properly reject, in the course of his review, services submitted and certified by a person other than an appropriate professional.

"To assist in the administration of Chapter 4733 R.C., the Board of Registration for Professional Engineers and Surveyors respectfully requests an opinion on the following questions:

"1. Does this Board have the authority, under Chapter 4733 R.C., to make the determination of the types of services which shall be intrinsic to the practice of Engineering, and which services shall be intrinsic to the practice of Surveying?

"2. Does a County Engineer, or a City Engineer, or any public official of any political subdivision of this State, who, as a part of his responsibility to that jurisdiction, is required to review Engineering or Surveying plans, designs or specifications for compliance with the applicable codes and/or regulations, have the authority to reject

Surveying plans, designs or specifications which have been certified by other than a registered Surveyor, or to reject Engineering plans, designs or specifications which have been certified by other than a Professional Engineer?"

1. Section 4733.01, Revised Code, defines the key terms used in Chapter 4733 as follows:

"(A) 'Professional engineer' means a person who has been registered as provided in such sections.

"(B) '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.

"(C) 'Surveyor' means a person who engages in the practice of that branch of engineering commonly known as surveying.

"(D) 'Practice of surveying' means 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, and the contour of the surface, for their correct determination and description and for conveyancing, for recording, or for the establishment or reestablishment of land boundaries and the plotting of lands and subdivisions; and like measurements and operations involved in the surveying of mines, commonly known as 'mine surveying.'" (Emphasis added.)

Section 4733.07, Revised Code, gives the State Board of Registration for Professional Engineers and Surveyors authority to adopt rules, regulations, and bylaws as follows:

"The state board of registration for professional engineers and surveyors shall adopt all necessary rules, regulations, and bylaws, not inconsistent with sections 4733.01 to 4733.23, inclusive, of the Revised Code, and the constitutions and laws of this state or of the United States, to govern its times and places of meetings for organization and reorganization, for the holding of examinations, for fixing the length of terms of its officers, and for governing all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its business. The board shall adopt and have an official seal.

"In carrying into effect sections 4733.01 to 4733.23, inclusive, of the Revised Code, the board may hold hearings in accordance with sections 119.01

to 119.13, inclusive, of the Revised Code."
(Emphasis added.)

This Section gives the Board the power to adopt whatever rules are necessary, consistent with other code sections, to effectuate its powers and duties. Section 4733.11 (A), Revised Code, sets out, in great detail, the minimum standards for qualification of a professional engineer. Section 4733.11 (B), Revised Code, establishes the minimum standards for qualifications of surveyors. Without quoting this rather lengthy Section, it is sufficient merely to note, that it establishes different standards for the engineer than it does for the surveyor, and that it provides different examinations for the applicants for registration in each of the two professions. Different examinations, of course, have long been used; and it is generally recognized that the professions are different. The only logical conclusion is that the Board must determine which services are intrinsic to each profession. Such determination is necessary, of course, before the Board can construct separate tests for engineers and surveyors. This conclusion is further supported by Section 4733.13 (C), Revised Code, which requires separate examinations for each profession in the following language:

"(C) Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in professional engineering and in surveying. * * *"

I conclude, therefore, that the Board has the authority to determine which services are intrinsic to the practice of engineering, and which services are intrinsic to the practice of surveying.

2. Section 4733.17, Revised Code, requires that a professional engineer or surveyor must prepare the plans, specifications, and estimates for all public works, and inspect the construction thereof. It reads as follows:

"Neither this state, nor any of its political subdivisions, nor any municipal corporation shall engage in the construction of any public works involving the practice of professional engineering or surveying, for which plans, specifications, and estimates have not been made by, and the construction thereof inspected by, a licensed professional engineer or surveyor; provided this section shall not apply to the design, construction, improvement, or maintenance of any public work wherein the contemplated expenditure for the completed project does not exceed five thousand dollars. Any contract for engineering or surveying services executed in violation of this section shall be void and any moneys advanced or paid under such contract by this state or any of its political subdivisions or any municipal corporation shall be refunded forthwith.

"Sections 4733.01 to 4733.23, inclusive, of the Revised Code do not exclude a qualified or registered architect from such engineering practice as may be incident to the practice of his profession, or do not exclude a professional engineer from such architectural practice as may be incident to the practice of professional engineering." (Emphasis added.)

In my opinion this means that a county engineer, or a city engi-

neer, or any public official, who is required to review engineering or surveying plans, designs, or specifications of a public work for compliance with the applicable codes, must reject such plans, if they call for expenditures in excess of \$5000, and if they are not certified by a properly qualified person. A professional engineer must certify engineering plans, and a professional surveyor must certify surveying plans. When Section 4733.17 is read in light of the intent of the legislature to create different duties and functions for surveyors and engineers, it follows that a county engineer, a city engineer, or a public official, who is required to review engineering or surveying plans, designs, or specifications of a public work for compliance with the applicable codes, must reject those which are not certified by one whose training and qualifications have given him the special competence required by the various statutes aforementioned.

In specific answer to your question it is my opinion, and you are so advised, that:

1. The State Board of Registration for Professional Engineers and Surveyors has the authority, under Chapter 4733, Revised Code, to make the determination of the types of services which shall be intrinsic to the practice of engineering, and which services shall be intrinsic to the practice of surveying.

2. A county engineer, or a city engineer, or any public official of any political subdivision of this state, who, as part of his responsibility to that jurisdiction, is required to review engineering or surveying plans, designs, or specifications of a public work, costing in excess of \$5,000, for compliance with the applicable codes and regulations, has the authority to reject surveying plans, designs, and specifications which have been certified by other than a registered surveyor, and to reject engineering plans, designs, or specifications which have been certified by other than a professional engineer.