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ENGINEERS (OFFICE) OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

94-111

1994 Tenn. AG LEXIS 119

October 6, 1994

**SYLLABUS:**

[\*1]

Licensure of Professional Engineers

**REQUESTBY:**

CHARLES W. BURSON, Attorney General and Reporter (MICHAEL E. MOORE, Solicitor General; EUGENE B. WHITESELL, Assistant Attorney General)

**OPINION:**

QUESTION

Whether an engineer who was exempt from registration under the version of *Tenn. Code Ann. § 62-2-103(3)* in effect prior to July 1, 1994, makes "public use" of the title "engineer" within the meaning of the amended version of *Tenn. Code Ann. § 62-2-103*, which became effective July 1, 1994, by identifying himself publicly as an "engineer."

OPINION

The amendment to *Tenn. Code Ann. § 62-2-103* clarifies the scope of the exemption created by the provision. As amended, the provision prohibits a person who falls within the exemption from making "public use" of the title "engineer." Under the statute, as amended, a person may do engineering work for his employer without registering with the State, provided that such person does not hold himself out to the public as engineer. Thus, a person may refer to himself as an engineer within the confines of his place of business and use the title on correspondence or business cards in the course and scope of his work for his employer when communicating with [\*2] persons with whom he is dealing in his capacity as employee. However, such person may not be listed as an engineer in any professional directory or otherwise hold himself out to the general public as an engineer.

ANALYSIS

*Tenn. Code Ann. §§ 62-2-101* and *62-2-105(b)* make it unlawful for any person to practice engineering in Tennessee unless that person is registered in Tennessee as an engineer. *Tenn. Code Ann. § 62-2-105(c)* broadly defines the practice of engineering as follows:

A person is construed to practice (or offer to practice) engineering, architecture or landscape architecture who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself to be an architect, engineer or landscape architect, with or without qualifying adjective, or through the use of some other title implies that he is an architect, engineer or landscape architect.

*Tenn. Code Ann. § 62-2-105(c)*. *Tenn. Code Ann. § 62-2-101* provides that the purpose of the registration requirement is to "safeguard life, health and property, and to promote public welfare."

*Tenn. Code Ann. § 62-2-103* exempts certain classes of persons from the chapter. Prior to July 1, 1994, the [\*3] section provided as follows:

The following shall be exempted from the provisions of this chapter:

(1) Any person engaging in architectural, engineering or landscape architectural work as an employee of a registered architect, registered engineer or registered landscape architect; provided, that such work may not include responsible charge of design or supervision;

(2) Architects, engineers, or landscape architects who are not residents of and have no established place of business in this state, who are acting as consulting associates of an architect, engineer or landscape architect registered under the provisions of this chapter; provided, that the nonresident is qualified for such professional service in his own state or country; and

(3) Architects, engineers or landscape architects who are employed by a person, firm or corporation not engaged in the practice of architecture, engineering, or landscape architecture and who render architecture, engineering or landscape architectural services to their employer only and not to the general public.

*Tenn. Code Ann. § 62-2-103* (1989).

The General Assembly amended Section 62-2-103 during both the 1993 and the 1994 sessions. The 1993 [\*4] amendment added a proviso to the introductory language of the section. The 1994 amendment added a fourth exempt class n1 and made a minor change to the introductory paragraph. No changes were made specifically to subsections 1 through 3. Pertinent to this opinion is the amended introductory paragraph, which became effective on July 1, 1994. The modified introductory paragraph now reads as follows (showing new language underlined):

62-2-103. Persons exempt from chapter. -- The following shall be exempted from the provisions of this chapter; provided, however, that except as provided in paragraph (4) of this section nothing in this section shall be construed as exempting any person who makes public use of the title "engineer", "architect", or "landscape architect" or any appellation thereof, including persons employed by the State of Tennessee or political subdivisions thereof:

The new subsection 4 of *Tenn. Code Ann. § 62-2-103*, which also went into effect on July 1, 1994, provides:

(4) Architects, engineers or landscape architects who are employed by a Municipal Electric System or Electric and Community Service Cooperative as defined in *Tennessee Code Annotated, Section* [\*5] *65-34-102*, or telephone cooperatives as defined in *Tennessee Code Annotated, Title 65, Chapter 29* and who render architectural, engineering or landscape services pertaining to the operations of their employer and who do not offer their services to the general public in exchange for compensation other than that received from their employer. Provided that nothing in this paragraph shall be construed as exempting any person who makes public use of the title "engineer", "architect", or "landscape architect" or any appellation thereof.

n1 This opinion does not address any issues that may arise by the addition of the new exempt class set forth in *T.C.A. 62-2-103(4)*.

This opinion addresses the effect of the amended introductory paragraph of *Tenn. Code Ann. § 62-2-103* on the employee-engineer exemption set forth in subsection 3 of the section.

An amended act is ordinarily construed as if the original statute has been repealed and a new and independent act in the amended form has been adopted in its stead. *Redmon v. LeFevre*, 503 S.W.2d 97 (Tenn. 1973). Furthermore, as a general rule of statutory construction, a change in the language of a statute indicates persuasively that [\*6] a departure from the old law was intended. *Dunn v. Hackett*, 833 S.W.2d 78, 81 (Tenn. Ct. App. 1992).

The addition of the proviso to the introductory paragraph of *Tenn. Code Ann. § 62-2-103* suggests that the General Assembly intended to depart from the old law by limiting or clarifying the scope of the exemption created by the section. Prior to the amendment, subsection 3 of *Tenn. Code Ann. § 62-2-103* clearly allowed an engineer who provided engineering services only to his employer to "practice" engineering, as defined in *Tenn. Code Ann. § 62-2-105*, without being registered, provided that neither the engineer nor the employer engaged in providing engineering services to the general public. Thus, an employee-engineer did not have to register with the State and could publicly represent himself or herself to be an engineer "by verbal claim, sign, advertisement, letterhead, card, or in any other way." *Tenn. Code Ann. § 62-2-105(c)*.

The amended language of *Tenn. Code Ann. § 62-2-103* presents a more limited exemption. As amended, the section provides that it is not to be "construed as exempting any person who makes public use of the title "engineer" . . .

including [state] employees. [\*7] . . ." Thus, no person falling under one of the enumerated classes, including an employee-engineer, may make "public use" of the title "engineer." The term "public use" is not defined anywhere in the statute or Chapter 62.

The primary rule in statutory construction is to give effect to the legislative intent. *Mercy v. Olsen*, 672 S.W.2d 196 (Tenn. 1984). The meaning of the statute is to be determined not from special words in a single sentence or section but from the statute taken as a whole and viewing the legislation in the light of its general purpose. *State ex rel. Bastnagel v. City of Memphis*, 224 Tenn. 514, 457 S.W.2d 532 (1970). "Statutes forming a single statutory scheme should be construed together to make the system consistent in all its parts and uniform in its operation." *Wayne County v. Tennessee Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988) (citing *Westinghouse Elec. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984)). Usually, where the language of a statute is plain, clear and unambiguous, the words of the statute as written will be given full effect and there is no need to resort to rules of construction to reach the legislative [\*8] intent. *Carr v. Ford*, 833 S.W.2d. 68 (Tenn. 1992); *Reddy v. Mfg. Co. v. Olsen*, 661 S.W.2d 868 (Tenn. 1983).

Hence, the term "public use" as used in the statute must be interpreted in its natural and ordinary meaning and in the context of the entire statute. The term "public use" implies any use in public. Consequently, the effect of the amendment would appear to be that while an employee-engineer may technically practice engineering without registering under Chapter 62 of the Tennessee Code, he may in no way represent or hold out himself to the general public as an engineer. Accordingly, within the company, such person may hold the title of "engineer" and may identify himself by title on business cards or correspondence distributed in the course and scope of his employment. He may not, however, hold himself out to the general public as an engineer or list himself in any professional directory as an engineer. The legislative history for both the 1993 and 1994 amendments to *Tenn. Code Ann. § 62-2-103* comports with this definition of the term "public use."

Requested by: Rep. Brenda Kaye Turner, 20 Legislative Plaza, [\*9] Nashville, TN 37243-0129