

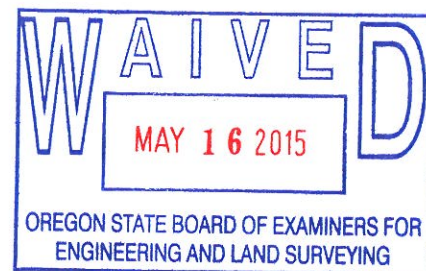
ELLEN F. ROSENBLUM
Attorney General



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

FREDERICK M. BOSS
Deputy Attorney General



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DATE: April 1, 2015.

TO: Mari Lopez, Administrator

FROM: Katharine M. Lozano, Senior Assistant Attorney General
Business Activities Section

SUBJECT: Industrial Exemptions and Private Timber Companies
DOJ File No. 917001 GB0225-15

A handwritten signature in black ink, enclosed in a circle. The signature appears to be "K. Lozano".

QUESTION

You have asked whether the "industrial exemptions" of ORS 672.060(5) and (6) apply to private timber companies.

SHORT ANSWER

It depends.

ANALYSIS

ORS 672.060(5) provides that the following is exempt from ORS 672.002 to 672.325:

- (5) An individual, firm, partnership or corporation practicing engineering or land surveying:
- (a) On property owned or leased by the individual, firm, partnership or corporation, or on property in which the individual, firm, partnership or corporation has an interest, estate or possessory right; and
 - (b) That affects exclusively the property or interests of the individual, firm, partnership or corporation, unless the safety or health of the public, including employees and visitors, is involved.

In turn, ORS 672.060(6) provides that the following is also exempt from ORS 672.002 to 672.325:

- (6) The performance of engineering work by a person, or by full-time employees of the person, provided:
 - (a) The work is in connection with or incidental to the operations of the person; and
 - (b) The engineering work is not offered directly to the public.

Traditionally, these two provisions have been known as the “industrial exemptions.” We provided advice on their legislative history to the Oregon State Board of Examiners for Engineering and Land Surveying (“Board”) on October 8, 2010 (advice attached), and there have been no changes to these provisions of the law since that time.

ORS 672.060(5) is, in broad terms, an exemption from licensure and Board jurisdiction that is: for the practices of both engineering and land surveying; for those who own or have some other possessory interest in the property where the practice of engineering or land surveying is taking place; being carried out for any purpose; impact-restricted by location or interests; and, restricted by safety concerns. The practices of engineering and land surveying, are defined in ORS 672.005 and ORS 672.007¹, and include professional services, purporting to be authorized to offer these professional services, and the and the use of protected titles associated with the professions of engineering and land surveying.

ORS 672.060(6) is, also in broad terms, an exemption from licensure and Board jurisdiction that is: *only* for performing engineering work (not for land surveying); only for the person performing the work or the person’s full-time employees; restricted by purpose (“in connection with or incidental to the operations of the person”); not restricted by potential impact, location or safety concerns; and work that is not “offered directly to the public”¹. Under the previous exemption, “practicing engineering or land surveying” is exempt, and the practice of engineering and the practice of land surveying are both defined in statute. Under this subsection (6), it is not the practice of engineering, but the “*Performance of engineering work*” that is exempt. Performance of engineering work is not defined by statute. To resolve the meaning of a word in statute or administrative rule that is not specifically defined, we look to the statute’s or rule’s plain language, giving words of common usage their natural and ordinary meaning. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993) (establishing standard of statutory construction); *Monson v. State of Oregon*, 136 Or App 225, 235, 901 P2d 904 (1995) (applying *PGE* standard to construe administrative rule). The relevant, plain and ordinary meaning of “performance” is “the act or process of carrying out something.” WEBSTER’S THIRD NEW INT’L DICTIONARY 1678 (unabridged ed. 1971). “Work” can, of course, be a product or an activity. However, one creates or designs a product, but “performs” an activity. Therefore, it appears that “work,” within the context of this exemption, means, “activity in which one exerts strength or faculties to do or perform.” WEBSTER’S at 2634 (emphasis added). Thus, performing engineering work appears to be the conducting of engineering activities, irrespective of whether a product is created, and does not appear to include use of the professional engineer title.

The second phrase that requires analysis is “in connection with or incidental to” the operations of the person. The plain and ordinary meaning of “incidental” is, “subordinate, nonessential, or attendant in a position of insignificance * * *.” *Id.* at 1142. Therefore, it appears that the engineering work of the subsection (6) exemption can be connected to, or subordinate/ nonessential to the person’s primary operations, but cannot *be* the person’s primary operations.

The third phrase that requires further analysis is “offered directly to the public.” There are, in general, two ordinary meanings of “offer.” The first is “present, tender, proffer * * * present for acceptance or rejection * * * bring or put forward for action or consideration,” and, the second is, “to make available or accessible.” *Id.* at 1566. It, therefore, appears that there are two different ways “offered” can be construed – an affirmative and intentional act, or the passive opening of an opportunity. The two relevant plain and ordinary meanings of “directly” correspond, respectively, to each relevant meaning of “offer.” The relevant definition of “directly” that seems to correspond to the affirmative and intentional meaning of “offer” is “purposefully or decidedly and straight to the mark.” *Id.* at 641. The relevant definition of “directly” that seems to correspond to the passive opening of an opportunity is, “without any intermediate step.” *Id.* at 641. Last, and unlike subsection (5) of the Board’s exemptions, which specified that the *adjective* “public” includes employees and visitors, subsection (6) does not define the *noun* “public” for the purposes of direct offers of engineering work. The applicable plain and ordinary meaning of the noun “public,” is “the people as a whole: POPULACE, MASSES,” *Id.* at 1836, much as it would have been in 1910, as detailed in our October 8, 2010 advice.

Thus, it appears that the exemption under subsection (6) is distinguishable from that under subsection (5) in several subtle but significant ways, which the following chart may help illustrate:

	Action or Product	Who is exempt?	Location	Purpose	Impact or recipient
ORS 672.060(5)	Practice of engineering or land surveying (includes specific services, offers to provide services, and title use)	Property “owner”	Property of “owner”	Any	Affects exclusively the property interests of the property owner AND does not involve public health or safety, (incl. employees and visitors)
ORS 672.060(6)	Performance of engineering work (the activity of engineering work, not use of title). Engineering only	Person performing the work or full time employee of the person, performing the work	Any	In connection w/ or incidental to the person’s operations	Not intentionally provided straight to the general public AND Not made automatically available to the general public

After discerning the meaning of the statutory terms involved, we then apply each element of these exemptions to the engineering or land surveying at issue, to determine whether an "industrial exemption" is available.

For example, it is our understanding that a common activity of private timber companies is for company crews to conduct surveys of land where the company intends to harvest trees, and mark trees for cutting, accordingly. This work would not fall under the exemption of ORS 672.060(6) because subsection (6) does not exempt land surveying work. This timber cut surveying might, however, fall under the exemption of ORS 672.060(5), because subsection (5) includes both the practice of engineering and the practice of land surveying. If, for instance:

1. the timber company is performing the survey exclusively on land the timber company owns or leases;
2. the surveying and resultant timber cut marking affect only the company's property; and,
3. public health or safety is not affected by the timber cut surveying (including the health and safety of the individuals who are actually making the timber cut surveys, other employees, and visitors),

then this activity would appear to be exempt from Board licensure and regulation. On the other hand, if the timber cut surveying does not remain completely internal to the timber company's property, but includes surveying to establish where property boundaries are shared by the timber company and another private property owner or unleased federal lands, the activity no longer affects exclusively the property of the timber company. Then the surveying also affects the boundaries of other properties. In that case, because the surveying fails to include all the required elements of subsection (5), the exemption no longer applies.

As a second example, it is our understanding that another common activity of private timber companies is road design and building in and through forest lands, for ingress and egress of the companies' logging crews and logging trucks. We assume for the purposes of this example that the road design and building at issue involves engineering work.² The road design and building may fall under either, both, or neither of these exemptions, depending upon the circumstances. If, for instance:

1. the road design and building (*practice of engineering [subsection 5] and engineering work [subsection 6]*)
2. is practiced by the timber company itself (*property owner [subsection 5]*),
3. via its full-time employees (*full time employees of legal person performing the work [subsection 6]*);
4. performed on the property owned by the timber company (*subsection 5*);
5. will be done only "in connection" with the timber company's logging operations (*road design and building are not themselves a timber company's "operations" [subsection 6]*);
6. it affects exclusively the property of the timber company and does not affect public health or safety (*including timber company employees and visitors to the property [subsection 5]*);
7. and the work is not automatically open and accessible to the general public (*[subsection 6]*),

² See Letter of Advice dated November 29, 1979, to Senator, the Honorable Mike Ragsdale, (OP-7821) (attached).

then both exemptions would apply to the work. If, on the other hand, we begin with that same example, but change one fact -- the timber company now contracts with an outside road crew that does not employ a registered professional engineer, to design and build the road on the timber company's property -- then, the person practicing engineering is no longer the property owner, so the exemption under subsection (5) no longer applies, and neither the timber company nor its full time employees performed the engineering work, so it is no longer exempt under subsection (6), and the crew hired by the timber company is subject to Board enforcement.

If we begin with the same, initial road building example, but change a different fact -- the road is being designed and built to traverse a steep incline on unstable soil, near a stream that flows from the timber company's property onto adjacent property -- then, should a company employee on the road crew be injured during construction, *or* should large soil deposits from the road building project collapse into the stream and affect the water quality, fish populations, etc. of the adjacent property, the engineering work would no longer fall under the exemption of subsection (5). This is because the work now affects the health and safety of employees (who are specifically included in the exemption's "public health and safety" element), and because the work no longer affects *exclusively* the property of the timber company (it also affects the adjacent properties). Yet, even in this altered example, the road design and building still appears to fall within the exemption of subsection (6) and would not, therefore, be subject to Board registration or enforcement. Add a second additional fact -- while the timber company is constructing its roadway, it opens that road to the public for hunting or Christmas tree cutting. Here, not only does the work now affect the health of employees and affect other property (subsection 5), it is now also offered directly to the public, and therefore no longer falls within exemption of subsection (6). The timber company's road project appears to be subject to Board enforcement under this scenario.

RECOMMENDATION

Because of the many nuances and factual complexities possible in each case of this type, we recommend that the board evaluate them on case-by-case bases.

If you have any additional questions, concerns, or would like further or more specific analysis, please do not hesitate to contact us.

ⁱ **672.005 Additional definitions.** As used in ORS 672.002 to 672.325, unless the context requires otherwise:

- (1) "Practice of engineering" or "practice of professional engineering" means doing any of the following:
 - (a) Performing any professional service or creative work requiring engineering education, training and experience.
 - (b) Applying special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, testimony, evaluation, planning, design and services during construction, manufacture or fabrication for the purpose of ensuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects.
 - (c) Surveying to determine area or topography.

(d) Surveying to establish lines, grades or elevations, or to determine or estimate quantities of materials required, removed or in place.

(e) Surveying required for design and construction layout of engineering and architectural infrastructure.

(f) Performing photogrammetric mapping.

(2) "Practice of land surveying" means doing any of the following:

(a) Providing or offering to provide professional services that apply mathematics, geodesy and other sciences and involve:

(A) The making of geometric measurements and gathering of related information pertaining to:

(i) The physical or legal features of the earth;

(ii) Improvements on the earth; or

(iii) The space above or below the earth; or

(B) The development of measurements and information described in subparagraph (A) of this paragraph into graphics, data, maps, plans, reports, descriptions, projects or other survey products.

(b) Performing geodetic surveys.

(c) Establishing, reestablishing or replacing boundaries or geodetic control monuments or reference points.

(d) Locating, relocating, establishing, reestablishing or retracing any property lines or boundaries for any tract of land, road right-of-way or easement.

(e) Making any survey for the division or subdivision of a tract of land or for the consolidation of tracts of land.

(f) Locating and laying out alignments, positions or elevations for the construction of fixed works.

(g) Performing or offering to perform any investigation, interpretation or evaluation of, or any consultation or testimony about, any of the services described in paragraphs (a) to (f) of this subsection.

(h) Collecting, preparing, manipulating or modifying data related to activities described in paragraphs (a) to (f) of this subsection, other than acting as a scrivener.

(i) Performing photogrammetric mapping.

(j) Making surveys that involve horizontal or vertical mapping control or geodetic control.

672.007 Acts constituting practice of engineering, land surveying or photogrammetric mapping. For purposes of ORS 672.002 to 672.325:

(1) A person is practicing or offering to practice engineering if the person:

(a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a registered professional engineer;

(b) Through the use of some other title implies that the person is an engineer or a registered professional engineer; or

(c) Purports to be able to perform, or who does perform, any service or work that is defined by ORS 672.005 as the practice of engineering.

(2) A person is practicing or offering to practice land surveying if the person:

(a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a land surveyor;

(b) Through the use of some other title implies that the person is a land surveyor; or

(c) Purports to be able to perform, or who does perform, any land surveying service or work or any other service that is defined by ORS 672.005 as the practice of land surveying.

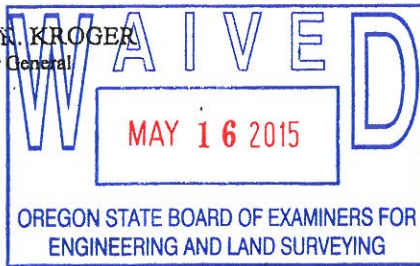
(3) A person is practicing or offering to practice photogrammetric mapping if the person:

(a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a photogrammetrist;

(b) Through the use of some other title implies that the person is a photogrammetrist; or

(c) Purports to be able to perform, or who does perform, any photogrammetric service or work or any other service that is defined by ORS 672.002 as photogrammetric mapping

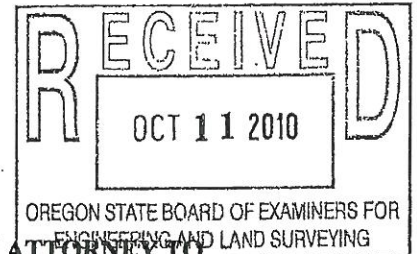
JOHN A. KROGER
Attorney General



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM


MARY H. WILLIAMS
Deputy Attorney General



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DATE: October 8, 2010

TO: Oregon State Board of Examiners for Engineering and Land Surveying
Professional Practices Committee
Jenn Gilbert, Executive Assistant

FROM: Joanna L. Tucker Davis, Assistant Attorney General 
Business Activities Section

SUBJECT: Industrial Exemptions / Legislative History
DOJ File No. 917001-GB0349-10

You have asked for advice on the legislative history of what the Board commonly calls the "industrial exemptions," found in ORS 672.060(5) & (6).

As a starting point, the current text of these exemptions is as follows:

- (5) An individual, firm, partnership or corporation practicing engineering or land surveying:
 - (a) On property owned or leased by the individual, firm, partnership or corporation, or on property in which the individual, firm, partnership or corporation has an interest, estate or possessory right; and
 - (b) That affects exclusively the property or interests of the individual, firm, partnership or corporation, unless the safety or health of the public, including employees and visitors, is involved.
- (6) The performance of engineering work by a person, or by full-time employees of the person, provided:
 - (a) The work is in connection with or incidental to the operations of the person; and
 - (b) The engineering work is not offered directly to the public.

ORS 672.060(5),(6).

The legislation to create the Board of Engineering Examiners and the statutes to regulate professional engineers was first enacted in 1919. General Laws of Oregon 1919, chapter 381. The original laws contained two exemptions from the requirement for registration. One exemption was in the definition of practice of engineering. It stated:

The execution as a contractor of work designed by a professional engineer or the supervision of the construction of such work as a foreman or superintendent for such a contractor shall not be deemed to be the practice of professional engineering within the meaning of this act.

General Laws of Oregon 1919, chapter 381, section 1(2). The practice of engineering was then defined as "the design and supervision of construction" of a long list of certain types of projects, such as "railroads, bridges, highways, roads, canals, harbors, river improvements, lighthouse, wetdocks, drydocks, ships, barges," and went on to list many others, and at the end of the list said, "which require for their design or the supervision of construction such experience and technical knowledge as are required in section 8 of this act for admission to examination." Section 8 required six years experience "engaged upon engineering work" and during that period "had charge of engineering work, as principal or assistant, for at least one year," or in lieu of that experience, to have been a graduate from an engineering school and been engaged in engineering work for at least two years and during that period had charge of engineering work as principal or assistant, for at least one year.

The other exemption from the registration requirement was in section 16 of the Act, "Application of Act." It provided, in part:

This act shall not apply to any professional engineer working for the United States government; nor to an architect practicing architecture; nor to any professional engineer employed as an assistant to a professional engineer register under this act; (nor to) any professional engineer coming from without this state and possessing the qualifications for the practice of [engineering, as required by the act] [who shall] be permitted to practice not to exceed three months * * * [and that United States military service engineers would be registered without an examination].

The language creating an exemption for the practice of engineering by individuals, firms or corporations on their own property, "unless the public safety or health is involved" was added to the law in 1921:

Nothing in this act shall be construed as requiring registration for the purpose of practicing professional engineering by an individual, firm or corporation, other than public utilities, on property owned or leased by said individual, firm or corporation, or in which said individual, firm or corporation has an interest, estate or possessory right, or which affects exclusively the property or interests of said individual, firm or corporation, unless the public safety or health is involved.

October 8, 2010

Page 3

General Laws of Oregon 1921, chapter 112, section 2(2). Unfortunately, there is no legislative history of the traditional variety for these old enactments.¹

According to Webster's New International Dictionary of the English Language (1910), the definitions of the following terms existed at the time:

- Public: "[o]f or pertaining to the people; relating to, or affecting, a nation, state, or community at large; - opposed to *private*."
- Safety: "[c]ondition or state of being safe; freedom from danger or hazard; * * * [f]reedom from whatever exposes one to danger or from liability to cause danger or harm."
- Health: "[s]tate of being hale, sound or whole, in body, mind or soul; well-being; esp., state of being free from physical disease or pain."

The next relevant amendment occurred in 1971, Or Laws 1971, c 751, sec 4, (Senate Bill 44) when the statutes governing professional engineers and land surveyors were combined. The language of what is now subsection 6 of ORS 676.060 was added. There was extensive commentary and debate regarding concerns that the definition of engineering was too vague and regarding a proposed registration requirement for public employees.

As for the industrial exemptions, the engrossed Senate Bill 44 included the following language:

[(4)] (7) An individual, firm, **partnership** or corporation [, *other than a public utility*] practicing [professional] engineering or land surveying on property owned or leased by the individual, firm, **partnership** or corporation, or in which the individual, firm, **partnership** or corporation has an interest, estate or possessory right, or which affects exclusively the property or interests of the individual, firm, **partnership** or corporation, unless the public safety or health is involved. "Public safety or health" includes the safety and health of employees and visitors.

(8) The performance of engineering work or land surveying by any person, firm or corporation, or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or services of such persons, firms or corporations, and provided that the engineering work or land surveying is not offered directly to the public.

Senate Bill 44, Engrossed, Section 4, subsections 7 and 8. The Engineers and Architects Council of Oregon provided a statement to the Judiciary Sub-Committee (the subcommittee reviewing this bill) and included the following language:

On Page 5, lines 23-27 – We have carefully considered Sec. 4, Sub-Section 8 and we find that the exclusion being sought in this section is adequately covered in

¹ Further research could be done by looking at old materials at the time, such as newspapers. This would likely be resource-intensive and may not lead to further clarification of the exemptions. If the Board would like this type of research done, please let us know.

Section 4, Sub-Section 7 and we read into this section the possibility of persons unqualified by registration doing in-house engineering on products that will be offered for sale to the public; whereas it says that "no engineering work or land surveying work will be offered to the public" the products of those works can be offered. We feel that the safety and health of the public is the most important reason for this Registration Act and that protection could be lost with the inclusion of Sec. 4, Sub-Section 8. We respectfully urge the Committee's re-evaluation of this subsection and request its deletion.

5/18/71 Letter to Judicial Subcommittee from Engineers and Architects Council of Oregon (EACO), signed by Eugene P. DiLoreto, President. In the legislative history, there is also a letter to the chairman of the committee from the EACO, signed by John Talbott, further stating:

As to Section IV, sub-section (8) of all the provisions in this engrossed bill, this sub-section, which was not in the originally introduced bill, destroys the greatest amount of protection provided to the public. It would mean for instance that a person making trusses intended to be used in a building could sell trusses which had not been designed by professional engineers. These trusses presumably would be used in the construction of buildings which might be susceptible to failure with the potential of great harm to the public. There is no definition of the product, systems or services and no limitation on the nature or kind of product system or service which might be provided without the public benefit of [sic] engineer. Would it not permit an unethical developer to plan and construct streets, sanitary works and other facilities which might truly become a peril to the public which might later use these? If there is a basis for an engineering act at all, it would seem fundamental that the purpose of this act "to safeguard life, health and property" that products, systems or service, the design of which requires the practice of engineering, should be covered in the engineering registration law.

5/18/71 Letter to Honorable Skelton, Chairman of Judicial Subcommittee from the Engineers and Architects Council of Oregon, signed by John Talbott. The Committee minutes also show that John Talbott read a prepared statement on behalf of the organization to the Judicial Subcommittee on May 18, 1971. It is unclear which letter was read. The minutes of the May 20, 1971 meeting of the subcommittee reveal the following discussion regarding the exemption:

Proposed amendments were discussed. Page 5, section 8 is the alleged compromise the two groups disagreed on. On line 23 after the word "work" delete "or land surveying." On line 25, after "the" delete "or services" and insert "operations." In line 27 delete the words "or land surveyed [sic]." Engineers want section 8 out, the utilities want section 8 in. They have agreed that they can both live and work with these amendments.

May 20, 1971 minutes of the House Judiciary Subcommittee II. We were unable to find any statements in the minutes or documents submitted by utilities regarding subsection (8). The language in the final enrolled bill deleted the references to land surveying and changed "products, systems and services" to "operations."

(8) The performance of engineering work by any person, firm or corporation, or by full-time employees of any of them, provided such work is in connection with or incidental to the operations of such persons, firms, or corporations, and provided that the engineering work is not offered directly to the public.

While it is not entirely clear what the compromise was intended to accomplish, it appears that the discussion centered on engineering that would be used in the creation of products to be sold to the public. The changes to these exemptions post-1971 do not appear to be significant and we did not research those changes.

Please let us know if you would like us to further analyze any of specific questions that have been raised in regards to these exemptions² or have any questions or concerns regarding this memorandum.

ⁱ When the bill was introduced, it contained a provision that was intended to require anyone in public employment who practiced engineering to be a registered engineer. This was to address a concern that people who were not qualified were practicing engineering and that was not in the interest of public safety. Senate Judiciary Committee, Minutes, February 3, 1971, Public Hearing (SB 44), p. 3. That provision read as follows:

(1) The state or a county, city, district or other political subdivision and any authority or agency thereof shall not construct, or contract for the construction of, a public works involving the practice of engineering, unless the engineering drawings, specifications and the estimate for the works are prepared by, and the construction is executed under the responsible charge of a registered professional engineer. Any contract executed in violation of this section is void.

(2) The state or a county, city, district or other political subdivision and any authority or agency thereof shall not engage in the practice of land surveying unless the surveys are executed under the responsible charge of a registered professional engineer or a registered professional land surveyor.

Senate Bill 44 (1971), section 4, as introduced. That language was taken from the Model Law prepared and adopted by the National Council of Engineering Examiners. But representatives of local governments testified in opposition to section 4, which resulted in its deletion, and amendments to ORS 672.060 were made instead. There was much discussion in the minutes about the perceived impact that the proposed language would have had on local governments, including discussion of projects that governments might or might not need a registered engineer to perform. Some of the situations that were mentioned that the amendment was intended to address (which led to the deletion of the proposed language set out above) were county roadmasters who build roads according to federal standards but may not be engineers, and sanitarians that design sewer or drainage systems, but should not be required to be registered engineers. Sanitarians and landscape architects were then specifically added to the exemptions in ORS 672.060. There were concerns that whatever the final product or result was, if it was something that could impact the public's safety it should require a registered engineer. There was also testimony that the definition of the practice of engineering (Or Laws 1971, section 2(1)) should be adequate to exempt the work that could be done by non-engineers and cover the work that they felt should be done by registered engineers.

² A number of specific questions relating to these exemptions have recently arisen, including:

- The meaning of the term "public;"
- The meaning of "engineering work;"
- When is the safety/health of public involved;
- Whether an independent contractor is an "employee;"
- Whether submitting plans to a city an "offering to the public."

JAMES A. REDDEN
ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

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Salem, Oregon 97310
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November 29, 1979

No. 7821

This opinion is issued in response to a question presented
by the Honorable Mike Ragsdale, State Senator.

QUESTION PRESENTED

Are the services of a registered professional
engineer required for construction, reconstruction
or repair of public roads?

ANSWER GIVEN

Yes, for construction or reconstruction of
roads, or for repair of roads in any case in which
the purpose is to strengthen or increase capacity,
or where the road has deteriorated to the extent
that the repair would constitute significant
strengthening. No, for repairs designed to preserve
the road or restore it to its original condition,
where the pre-repair condition is not greatly
deteriorated.

DISCUSSION

This opinion request arises out of a concern that there
are many road-work situations where it is not obvious whether
the services of a registered professional engineer are needed.

We are asked for some guidelines to aid in determining where one is required.

ORS 672.005 states in relevant part:

"As used in ORS 672.002 to 672.310, unless the context requires otherwise:

"(1) 'Practice of Engineering' means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work such as consultation, investigation, evaluation, planning, design and services during construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects.

"(2) 'Practice of Engineering' does not include the execution of work designed by a professional engineer or the supervision of the construction of such work as a foreman or superintendent."

ORS 672.020(1) restricts the "practice of engineering" to "registered professional engineers" who possess a valid certificate to practice engineering issued by the State Board of Engineering Examiners under ORS 672.002 to 672.310. The purpose of this requirement is to "safeguard life, health and property." ORS 672.020(1). Several exemptions to the application of ORS 672.002 to 672.310 are found in ORS 672.060. Among these exemptions, it is found in subsection 5 that "[a]ny person practicing engineering under the supervision of a registered professional engineer" would not have to be so registered. These requirements should be

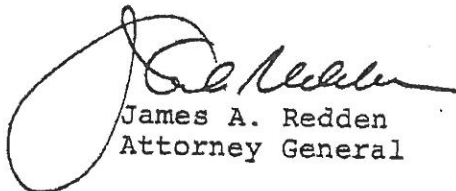
broadly construed in view of their purpose to "safeguard life, health and property."

This does not, of course, mean that every bit of repair work to the public roads must be performed, supervised or planned by an engineer. So long as the "life, health and property," of the public would not be endangered many tasks could be performed, e.g., the simple filling of a pothole. The circumstances present in each instance would, of course, be important in an actual determination of whether the services of a "professional registered engineer" would be needed. It is impossible in this opinion to set out the situations where such service would or would not be required. The tests set forth in the statute (necessity for skill, education, training and experience, and the safeguarding of life, health and property) must be applied on a case by case basis.

We do, however, suggest a guideline which may be used. Every case of construction of a roadway requires the services of a professional engineer. Reconstruction would probably require such services; repair may not. When a judgment decision must be made as to the best method to strengthen or increase the capacity of a road, the services of a registered professional engineer are required. If, however, the purpose is to preserve the road in or restore it to its original condition, such services would usually not be required. The exception would be a case in which a road has deteriorated to

an extent that the repair itself would constitute any significant strengthening. We are informed that there are adequate specifications, which can be followed by a non-engineer, for the preparation and application of the materials used, so that engineering skills would not be required for most such repairs.

There may, however, be cases in which tests required by the specifications, and particularly the interpretation of test results, would require the exercise of engineering judgment.



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JAR:DKH:tlg