

Opinion No. 57-123

June 10, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
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TO: Mr. A. L. Porter, Jr., Secretary-Director, New Mexico Oil Conservation Commission,
P. O. Box 871, Santa Fe, New Mexico

QUESTIONS

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May a full-time employee of a company engaged in oil and gas drilling operations survey well locations in the State of New Mexico on land owned or leased by his employer with out first being duly registered to practice the profession of engineering or land surveying by the State of New Mexico?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is our understanding that the Oil Conservation Commission of New Mexico requires that all proposed oil and gas well locations in the State of New Mexico be surveyed by a registered professional engineer or land surveyor in order to determine whether the proposed location is in accordance with the Commission's well spacing regulations. The aforementioned regulations were promulgated to prevent waste and protect correlative rights and are in no way concerned with the public safety or the public health.

We are further informed that it is the practice of many oil companies operating in this State to have the well locations on their land surveyed by an engineer or land surveyor who is a full-time employee of the company. In many cases the individuals who make the surveys in question are not registered in the State of New Mexico: however, a great number of these men are registered in another state.

Section 67-21-1, N.M.S.A., 1953 Compilation, relates to the registration of persons practicing the profession of engineering or land surveying and states:

"In order to safeguard life, health, and property, any person practicing or offering to practice the professions of engineering or land 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 land 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 land surveyor, unless such person has been duly registered or exempted under the provisions of this act (67-21-1 to 67-21-25)."

The above section would indicate that the employees of the oil companies in the instant case must be registered prior to the practice of their profession were it not for § 67-21-2, N.M.S.A., 1953 Compilation, which is as follows:

"Nothing in this act (67-21-1 to 67-21-25) shall be construed as requiring registration for the purpose of practicing professional engineering, or land surveying, by an individual, firm or corporation on property owned or leased by said individual, firm or corporation unless the same involves the public safety or public health."

In view of the above excepting proviso, two questions arise: (1) Whether the employees of the oil company are engaged in an endeavor involving the public safety or health; and (2) Whether such practices would constitute the unauthorized practice of the professions of engineering or land surveying.

We are of the opinion that well location surveyors do not involve the public safety or health while performing their duties, as outlined in this opinion. As we have previously indicated, the Oil Conservation Commission's regulation is promulgated on the hypothesis that employees should be registered in order to prevent waste and protect correlative rights, and is in no way concerned with the public safety or public health. Whether a practice involves the public safety or health is primarily a question of fact. In the instant case we can think of no way in which the public safety and health is involved, although we realize that § 67-21-2, supra, of the Code is clearly in the nature of an exception to the general provisions of § 67-21-1, and as such may not be liberally or freely construed.

Turning to question 2, our research indicates that the so-called "unauthorized practice" cases arise under statutes prohibiting the practice of a given profession by unlicensed individuals. Section 67-21-1, supra, is such a statute. Section 67-21-2, supra, however, does not require the registration for the purpose of practicing professional engineering or land surveying, of a firm or corporation, on property owned or leased by the said firm or corporation. Since a corporation cannot practice the profession of engineering, and can only act through the agency of natural persons, it follows that the above proviso authorizes employees of the corporation to survey oil and gas locations without registration. Such practice should be limited, of course, to property owned and leased by the corporations by whom they are employed.