



STATE RESTRICTIONS ON USE OF THE TITLE "NCE"

Different states restrict usage of the term "Engineer," as evidenced in the following Summary of Opinion (No. JC-0525) issued by the Office of the Attorney General—State of Texas, dated July 9, 2002:

"The Texas Engineering Practice Act, Article 3271a of the Revised Civil Statutes, does not allow an in-house employee of a private corporation, though classified internally as an "engineer" or under another engineering title, to use the title of "engineer" on business cards, cover letters, or other forms of correspondence that are made available to the public."

*Note: This is just the summary. The complete text of the opinion can be found at www.narte.org or by contacting the Texas Attorney General's Office, Post Office Box 12548, Austin, Texas 78711-2548
TEL: (512) 463-2100
WEB: www.oag.state.tx.us*

Current State of the "Engineering" Art

A NARTE member recently raised a question about the public use of the title "NCE" or "NCT." NARTE encourages the use of these titles by those who have achieved certification by NARTE. The designation is both a measure of self worth, and a public declaration of recognized competence based on meeting designated standards set by a professional certification accreditation organization and body of peers. There are instances, however, when using "NCE" is restricted.

Technicians are not regulated by states in the same way that engineers are. As a consequence, technicians certified by NARTE can use the title "NCT" without restriction. The situation is not as clear for engineers. As most people know, states have reserved the right to designate the title of "engineer." Most states have adopted some form of the model engineering registration law, the central focus of which is the reservation of the title "engineer" to those registered by the state in which the person practices.

Most people are also aware of the "industrial exemption." This term indicates that manufacturers are liable for the products they produce, not necessarily the staff through which the product is designed and manufactured. The industrial exemption acknowledges that employers can hire people skilled in engineering to perform engineering functions even if they are not registered, and engineers can represent themselves as engineers without state registration. The same principle applies to employment by the Federal Government. Federal engineers are not required to have a license. As a consequence, about 80% of the engineers practicing are employees of, or consultants to, a company or government. Therefore, they do not need to be registered and, in fact, unless meeting specifically designated state engineer standards, are not registered. This dichotomy has existed for years without challenge.

A New Interpretation

Now comes the difficulty. In July 2002, the Attorney General of the State of Texas was asked whether the Texas Engineering Practice Act permits in-house engineers to include their job titles on business cards, cover letters, and other correspondence. His response was that this was not permissible. He issued a six-page letter outlining his reasoning and the scope of application of his opinion (see side bar). For a complete copy of the Texas Attorney General's opinion, refer to the NARTE web site at www.narte.org/nartenews.html.

An old axiom says not to ask a question if you cannot handle the answer. I have read the AG's opinion and I cannot find fault with his reasoning - as far as it goes. For example, strict interpretation of the statute would lead one to agree that individuals cannot advertise their engineering capability unless

registered (by the state). Yet, there is an issue of practicality: while the statute prescribes who can use the title, it does not address enforcement.

Keep in mind that the document in question is an Attorney General's *opinion*. While it may follow sound legal theory, it has not yet been adjudicated.

A Different View

Hugh K. Webster, Partner of Webster, Chamberlain and Bean in Washington, DC recently wrote a clarification of the use of certification marks. It was published in the October 2002 *Certification Communications Newsletter* (Volume X, Number 10, Publication Number 0106 of the National Certification Commission). Mr. Webster states:

If a certification program certifies as "engineers" individuals who are not registered professional engineers, does this violate State law? The answer in many cases is, "No." The use of a certain designation or title in connection with one's work is considered to be commercial speech entitled to protection under the First Amendment guarantee of free speech.

Therefore, a State cannot impose a "per se" ban on the use of such designations, including a certification that has the word "engineer" in its designation. The State must show that, in a specific instance, such use is false, misleading, or otherwise injurious.

In most cases, the simple fact that someone holds a certification that includes the word "engineer" does not imply they are also a registered professional engineer, or that they are performing engineering services. This is especially true when the certified individual is offering services only to commercial or governmental entities.

For example, a certified safety engineer may be employed by a company. Certainly the company knows whether or not this person is a professional engineer or is performing engineering services. In addition, if this person is working on matters for customers of a company, and those customers require the services of a professional engineer, verification is very simple, it is by a P.E. license, not by a private certification designation.

Conceivably, if an individual is a consultant or independent contractor and offers services to the public, i.e., general consumers, then use of the word "engineer" might be misleading, but this still must be proven and is a narrow category.

Despite the above, certifying associations can expect opposition to their use of the word "engineer." It is not a decision to be taken lightly. There are some steps that associations can take to protect themselves. One method is to include appropriate disclaimers and wording in the certification document to the effect that certification does not imply status as a P.E., nor does it authorize indi