

September 22, 1965

Mrs. Olean Barton, Acting Secretary
State Board of Registration for
Architects and Professional Engineers
Box 184
Jefferson City, Missouri 65102

Dear Mrs. Barton:

This is in answer to your request for an opinion of this office concerning the validity of the following proposed regulation concerning the registration of land surveyors:

"Regulation 1-8-65-1s. Registration as a land surveyor on basis of degree in civil engineering, written examination and proof of at least two years of satisfactory land surveying experience. Any person applying for registration as a land surveyor solely on the basis of a degree from a fully accredited four-year course in civil engineering from a school or college of engineering approved by the Board, who is found qualified in all other respects and who passes a one-day written examination in land surveying, will also be required to submit proof of at least two years of land surveying experience of a character satisfactory to the land surveying section of the board, before registration will be granted."

Assuming the professional engineering division of the board has authority either implied or expressed under Section 327.108-2 to issue regulations, it is our opinion that the proposed regulation in question would not be valid.

The profession of land surveying is regulated by Chapter 344 RSMo. Section 344.040 sets out the requirements for registration as established by the legislature as follows:

Mrs. Olean Barton

"Any person who shall show to the satisfaction of the professional engineering division of the state board of registration for architects and professional engineers that he is a person of good moral character, over the age of twenty-one years, with six years or more of active experience in land surveying of a character satisfactory to said division, or possessed of a degree in civil engineering from an accredited college or university, and who shall pass a written examination designed to show that he is qualified to practice land surveying, shall be eligible for registration as a land surveyor, and shall be so registered by the board on recommendation of its professional engineering division. In determining the land surveying experience of an applicant for registration, * * *" (Emphasis ours.)

It should be noted that anyone who possesses these qualifications shall be eligible for registration and shall be so registered.

The proposed regulation would make two years experience as a land surveyor an additional requirement for those persons possessed of a degree in civil engineering in order to qualify as a land surveyor.

In 73 C.J.S., Public Administration Bodies and Procedure, Section 94, p. 415, which is concerned with statutory limitations of an administrative body to make rules and regulations, it is stated:

"It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules and regulations, amend, alter, enlarge, or limit the terms of a legislative enactment."

This is the law in this state. See Ketring v. Sturges, 372 SW 2d 104; Mahon v. Searce, 228 SW 2d 384 and State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission, 225 SW 2d 792.

Mrs. Olean Barton

The proposed regulation does not "implement or make specific" the requirements of Section 344.040. It enlarges the statute by imposing an additional requirement, i.e., that one having a degree in civil engineering must also have at least two years of satisfactory surveying experience.

We think this regulation is contrary to the express requirements of the legislature and therefore invalid as beyond the power of the board.

Very truly yours,

NORMAN H. ANDERSON
Attorney General