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OPINION	:	No. 79-911
	:	
of	:	<u>January 11, 1980</u>
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SUBJECT: REGISTRATION UNDER PROFESSIONAL ENGINEERS ACT—A person not registered under the Professional Engineers Act may be lawfully employed by the State of California as an electrical engineer, provided that the State Personnel Board has not prescribed such registration as a minimum qualification for such employment, and that such person satisfies all other minimum qualifications prescribed by said board.

The Honorable John A. Nejedly, Senator, Seventh Senatorial District, has requested an opinion on the following question:

May a person who is not registered under the Professional Engineers Act be lawfully employed by the State of California as an electrical engineer?

CONCLUSION

A person who is not registered under the Professional Engineers Act may be lawfully employed by the State of California as an electrical engineer, provided that the

State Personnel Board has not prescribed such registration as a minimum qualification for such employment, and that such person satisfies all other minimum qualifications prescribed by said board for employment in the appropriate class.

ANALYSIS

The Professional Engineers Act is set forth in chapter 7 of division of the Business and Professions Code, commencing with section 6700.¹ The statutes pertinent to the present inquiries are set forth as follows:

“§ 6701.

“‘Professional engineer.’ within the meaning and intent of this act, refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines, processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.”

“§ 6702.1

“‘Electrical engineer’ as used in this chapter means a professional engineer in the branch of electrical engineering and refers to one who practices or offers to practice electrical engineering in any of its phases.”

“§ 6730.

“In order to safeguard life, health, property and public welfare, any person, either in a public or private capacity, except as in this chapter specifically excepted, who practices, or offers to practice, civil engineering, electrical engineering or mechanical engineering, in any of its branches in this state, shall submit evidence that he is qualified to practice, and shall be registered accordingly as a civil engineer, electrical engineer or mechanical engineer by the board.”

¹ Hereinafter, all section references are to the Business and Professions Code unless otherwise indicated.

“§ 6734.1

“Any person practices electrical engineering when he professes to be an electrical engineer or is in responsible charge of electrical engineering work.”

“§ 6787.

“Every person is guilty of a misdemeanor and for each offense of which he is convicted is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment to exceed three months, or by both fine and imprisonment:

“(a) Who, unless he is exempt from registration under this chapter, practices or offers to practice civil, electrical or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

“”

The inquiry presented is whether a person who is not registered may be lawfully employed by the State of California as an electrical engineer. In 58 Ops. Cal. Atty. Gen. 278 (1975) it was concluded that persons employed by the County of Los Angeles were exempt from the requirement of registration. The conclusion was predicated upon section 6734.1, which then provided:

“Any person practices electrical engineering within the meaning of Section 6730 when he professes to be an electrical engineer or is in responsible charge of electrical engineering work *other than as an employee of an employer and receiving wages or salary for such work.*” (Emphasis added.)

However, the section was subsequently amended to delete the words underscored. (Stats. 1977, ch. 526, § 2.) For purposes of this analysis it will be assumed that the employment in question involves the “responsible charge of work” within the meaning of section 6703 of the Business and Professions Code, and that the position is not that of a “subordinate” within the meaning of sections 6705 and 6740 of said code.

We first examine the applicability of the foregoing statutory provisions to the state. In determining whether the general terms of a statute are applicable to a public jurisdiction, well established rules of statutory construction must be followed. The California Supreme

Court has recently reviewed these rules as follows:

“[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. ‘Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.’ [Citation .]” (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 276–277; accord *Regents of University of California v. Superior Court* (1976) 17 Cal. 3d 533, 536.)

The statutes in question refer generally to any “person” engaged in the practice of professional engineering. (See §§ 6701, 6730; and *cf.* § 6787.) We have previously observed in 34 Ops. Cal. Atty. Gen. 194, 195 (1959) that where the infusion of the state or of its political subdivisions would result in the impairment of sovereign powers, the word “person” as used in a statute will not be held to include such public agencies unless there is an express indication that such was the legislative intent. (*Hoyt v. Board of Civil Service Commissioners* (1942) 21 Cal. 2d 399, 402; *Balthasar v. Pacific Electric Railway Co.* (1921) 187 Cal. 302, 305–308; *Philbrick v. State Personnel Board* (1942) 53 Cal. App. 2d 222, 228.) On the other hand, governmental entities have been held subject to legislation which by its terms applies simply to any “person.” (*City of Los Angeles v. City of San Fernando, supra*, 14 Cal. 3d at p. 277; *Flournoy v. State of California* (1962) 57 Cal. 2d 497, 498–499; *Hoyt v. Board of Civil Service Commrs., supra*; *State of California v. Marin Mun. Water District* (1941) 17 Cal. 2d 699, 704–705; *Estate of Cooke* (1976) 57 Cal. App. 3d 595, 602.)

The crucial distinction in each of these cases is whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired (see *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 182–183; *City of Orange v. Valenti* (1974) 37 Cal. App. 3d 240, 244), while no exception is provided when the agency’s public purposes are unaffected. (See *Regents of University of California v. Superior Court, supra*, 17 Cal. 3d at p. 537; *Flournoy v. State of California, supra*, 17 Cal. 2d at pp. 498–499; *State of California v. Marin Mun. Water District, supra*, 17 Cal. 3d at pp. 704–705; *City Streets Imp. Co. v. Regents, etc.*, (1908) 153 Cal. 776, 779; *Dropo v. City & County of S.F.* (1959) 167 Cal. App. 2d 453, 460.)

It is manifest that the relationship between a public employer and its employees affects the fundamental purposes and functions of the governmental body. (*Cf. In re Means*

(1939) 14 Cal. 2d 254, 258; and see unpub. op. of the California Attorney General, dated Dec. 29, 1978, No. IL 78-151.) It has been stated in this regard that governments perform their functions through their officers and employees elected or appointed for that purpose, and that any process of law which would tend to embarrass such officers or employees while in office, and hinder or distract them in the discharge of their duties, would injuriously affect the capacity of the state to perform its functions. (*Ruperich v. Baebr* (1904) 142 Cal. 190, 193; *Balthasar v. Pacific Electric Railway Co.*, *supra*, 187 Cal. at p. 308.)

The rule that governmental agencies are excluded from the operation of general statutory provisions, in the absence of express words to the contrary, only if their inclusion would result in an infringement upon sovereign powers, is long established. (*Butterworth v. Boyd* (1938) 12 Cal. 2d 140, 150; *Hoyt v. Board of Civil Service Commissioners*, *supra*, 21 Cal. 2d at p. 402.) Nevertheless, we are aware of no cases which have held public agencies bound by a general statute which regulates the employment relationship. On the contrary, we have, on a number of occasions, construed such statutes as not applicable to public jurisdictions, in the absence of any expression of legislative intent to the contrary. (See 1 Ops. Cal. Atty. Gen. 607 (1943) (§ 226, itemized statement of deductions); 5 Ops. Cal. Atty. Gen. 122 (1945) (employment of minors); 9 Ops. Cal. Atty. Gen. 275 (1947) (length of work day).) In *Butterworth v. Boyd*, *supra*, it was held that certain provisions of the Insurance Code could not be applied to a city where such application would have impaired the city's power to provide a health service system for municipal employees. In *Nutter v. Santa Monica* (1946) 74 Cal. App. 2d 292, it was held that the state policy regarding labor relations, Labor Code section 923, was not applicable to public employers.

Similarly, if the subject statutes apply to the state, then employees in designated positions who are not registered would be unable to discharge their duties. Thus, at least with respect to the requirement of registration, such statutes would clearly affect the employment relationship between the state and its employees, and the capacity of the state to perform its functions. (*Cf. In re Means*, *supra*, 14 Cal. 2d at p. 258.) Noting the "general rule that statutes involving an exercise of the police powers of the state requiring licenses do not apply to the state or to state agencies," we have concluded that a statute declaring it unlawful for any person, firm, or corporation to practice veterinary medicine without a license did not apply to the state. (34 Ops. Cal. Atty. Gen. 194 (1959); and see 6 Ops. Cal. Atty. Gen. 202 (1945); Ops. Cal. Atty. Gen. No. NS-298 (1937).)

We turn next to the question whether the Legislature by express words included the state within the meaning of the term "person" as used in the Professional Engineers Act. The term "person" is not defined. Section 6730, *supra*, provides in part that "any person, either in a public or private capacity," who practices electrical engineering shall be registered. (Emphasis added.) This sole reference constitutes some evidence that the

Legislature did intend to include the state as well as its political subdivisions within the purview of the Act. There are, however, persuasive indications to the contrary.

The policy of the State of California in the matter of its employees is reflected in its constitution and in a comprehensive system of laws pertaining specifically to state employment. (*In re Means, supra*, 14 Cal. 2d at p. 257.) Such an integral, comprehensive regulatory scheme is, in itself, an indication that the provisions of a general statute were not intended to apply. (*Cf. O'Sullivan v. City & County of San Francisco* (1956) 145 Cal. App. 2 415, 418.) Specifically, California Constitution, article VII, section 1 provides:

“(a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.

“(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.”

Section 2 establishes the State Personnel Board and provides for the appointment of its executive officer. Section 3 provides:

“(a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

“(b) The executive officer shall administer the civil statutes under rules of the board.”

The “civil service statutes” referred to in section 3 are found in title 2, division 5, part 2 of the Government Code,² commencing with section 18500, known as the State Civil Service Act. (§ 18570.) With regard to the qualifications of state personnel, section 18900 provides:

“Eligible lists shall be established as a result of free competitive examinations open to all persons who lawfully may be appointed to any position within the class for which such examinations are held and *who meet the minimum qualifications requisite to the performance of the duties of such position as prescribed by the specifications for the class or by board rule.*” (Emphasis added.)

² Henceforth, all section references are to the Government Code unless otherwise indicated.

Section 18931 provides:

“The board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position; for temporary appointments, and for applicants for examinations, and for such purposes may require such certificates of citizens, physicians, public officers, or others having knowledge of the applicant, as the good of the service may require. It may require necessary documentary evidence of citizenship, honorable discharge from the armed forces of the United States, possession of valid licenses for various purposes, or other evidence of identification, fitness. and qualification.”

Thus, the Legislature has expressly conferred upon the State Personnel Board the authority to prescribe the minimum qualifications of state employees, and provided in connection therewith that the board may require possession of valid licenses or other evidence of qualification. Section 18935 further provides that the board may refuse to examine or certify anyone who falls within any of fourteen categories. Such categories include anyone who lacks any of the requirements established by the board for the examination or position for which he applies (subd. (a)), or who is, in accordance with board rule, found to be unsuited or not qualified for employment (subd. (n)). No reference is made in section 18935 or in section 19572 designating grounds for dismissal, suspension, or other discipline, to the possession of valid professional or occupational licenses. Under the State Civil Service Act, therefore, the requirement of licensure as a minimum qualification for employment is a matter which rests within the sound discretion of the board. These provisions are “laws relating to the state civil service” within the meaning of section 3, *supra*.

As between a statute of general application, such as the Professional Engineers Act, and a statute pertaining specifically and exclusively to the state civil service, any conflict should, in the absence of a clear and unequivocal expression of legislative intent to the contrary, be resolved in favor of the latter. No such expression or specific reference to the state appears in the Professional Engineers Act. The mere reference in Business and Professions Code section 6730, *supra*, to persons “in a public or private capacity” was not, in our view, intended or designed to infringe upon the authority expressly conferred upon the State Personnel Board, as part of a comprehensive system of laws relating specifically to the state civil service, to prescribe minimum qualifications for state employment.

In any event, such authority of the board is constitutionally grounded and nor subject to limitation or modification. Among the powers reserved to the board by section 3 of article VII of the California Constitution is the power to prescribe classifications. This power is implemented by various provisions of the State Civil Service Act. Section 18523 defines “class” as:

“ . . . a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.”

Section 18801 provides:

“Every position in the state civil service shall be allocated to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if:

“(a) Sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used.

“(b) Substantially the same requirements as to education, experience, knowledge and ability are demanded of incumbents.

“(c) Substantially the same tests of fitness may be used in choosing qualified appointees.

“(d) The same schedule of compensation can be made to apply with equity.”

(See generally, *Professional Engineer in California Government v. State Personnel Board* (1977) 70 Cal. App. 3d 346, 350.) In *Fair Political Practice Com, v. State Personnel Board* (1978) 77 Cal. App. 3d 52, 56, the court observed that the power to classify carries with it the power to set salaries. Similarly, the power to establish qualifications is inherent in the power to prescribe classifications. Thus, the power to establish qualifications has been recognized by the Legislature as one of the necessary elements of the power to classify (§§ 18523, 18801. subd. (b), *supra*), and has been reposed in the board since its creation in 1934³ and in its predecessor agency, the State Civil Service Commission, since its inception

³ Section 3 then provided:

“Said board shall administer and enforce, and is vested with all of the powers, duties, purposes, functions, and jurisdiction which are now or hereafter may be vested in any other state officer or agency under. Chapter 500 of the California Statutes of 1013 as amended or any and all other laws relating to the state civil service as said

in 1913. (Stats. 1913, ch. 590, §§ 5 and 10.)

California Constitution, article VII, formerly article XXIV⁴ as adopted by the people in 1934, created the State Personnel Board as a nonpartisan agency insulated from political interference by the legislative and executive branches. (See Ballot Pamp. Proposed Amends. to Cal. Const. with Arguments to Voters, Gen. Elec. (Nov. 4, 1934), p. 12.) In this regard, the court in *Fair Political Practices Com. v. State Personnel Board*, *supra*, 77 Cal. App. 3d at p. 58 stated in part:

“The 1934 constitutional amendment manifests a purpose of centralizing civil service administration in the State Personnel Board as an agency immune from the external and internal pressures which beset the agencies which are the direct employers of state civil service employees. Any subsequent statutory enactment which attempts to take away a constitutionally reposed power from the State Personnel Board would constitute an erosion of the constitutional objective of centralizing civil service administration in a politically insulated agency.

“The civil service system and its import, established by constitutional amendment, may not now or in the future be diluted or derogated by legislative enactment. Only by constitutional amendment may those powers be abrogated in any way. Regardless of motive, altruistic or otherwise, neither the Legislature nor judiciary may decree a dilution or removal of a power granted by the Constitution.”

laws may now exist or may hereafter be enacted, amended or repealed by the Legislature.”

Section 2(c) provided:

“ . . . the adoption of rules and regulations, the creation and adjustment of classifications and grades, and dismissals. Demotions, suspensions and other punitive action for or in the State civil service shall be and remain the duty of the board and a vote of a majority of the members of said board shall be required to make any action with respect thereto effective.”

⁴ Neither the drafters of the 1970 amendments which revised the subject provisions to their present form (see Ballot Pamp. Proposed Amends. to Cal. Const. with Arguments to Voters, Gen. Elec. (Nov 3, 1970). p. 24) nor the voters who adopted them intended to change or alter the historic role of the State Personnel Board in relation to the state civil service or to diminish its original jurisdiction in respect thereof. (See Cal. Const. Revision Com. Proposed Revision (1966) pp. 100, 112; 56 Ops. Cal. Atty. Gen. 217, 219 (1973).) Article XXIV was renumbered article VII in 1976, without change as to meaning (see Ballot Pamp. Proposed Amends, to Cal. Const. with Arguments to Voters, Prim. Elec. (June 8, 1976), pp. 58.59.)

The people of the state, by initiative amendment to the constitution, have prescribed a complete merit system of employment, including the power of appointment, administration, and enforcement together with all powers and functions relating to such employment. (*Id.*, at p. 57.) With respect to such constitutionally conferred powers, the jurisdiction of the board is primary and exclusive. (*Cf.* 36 Ops. Cal. Atty. Gen. 217 (1973); and *cf.* unpub. op. of the California Attorney General, dated Sept. 7, 1977, No IL 77-1 26: *Stockton v. Department of Employment* (1944) 25 Cal. 2d 264.) In view of the foregoing statutory and constitutional considerations, it is concluded that a person who is not registered under the Professional Engineers Act may be lawfully employed by the state as an electrical engineer, provided that the State Personnel Board has not prescribed such registration as a minimum qualification for such employment, and that such person satisfies all other minimum qualifications prescribed by the board for employment in the appropriate class.
