

N.D.A.G. Letter to Zink (Jan. 21, 1986)

January 21, 1986

Mr. LaVerne L. Zink
Executive Secretary
North Dakota State Board of
Registration for Professional
Engineers and Land Surveyors
P. O. Box 1357
Bismarck, ND 58502

Dear Mr. Zink:

Thank you for your letter of November 18, 1985, regarding registration of engineers by examination or endorsement of registration from another state.

Your letter indicates that the basis for your request involves an applicant from another state who is seeking registration in North Dakota. My understanding of your statement of the facts is as follows:

An engineer in another state was previously registered in that state after passing a written examination on the principles and practice of engineering. At the time of registration the applicant had less than four years of experience in engineering work. North Dakota requires its applicants to pass the same examination, but they may not take the examination unless they have had four years of engineering experience, applied for registration and been approved by the board.

The applicant now has more than four years of engineering experience and wishes to become licensed in North Dakota. The North Dakota State Board of Registration for Professional Engineers and Land Surveyors (hereinafter board) has denied the applicant's request for registration by endorsement because at the time the applicant was registered in the other state he would not have qualified for registration under North Dakota's standards.

The applicant alternatively requested that his test results from the principles and practice of engineering examination taken in the other state be accepted by the board. The applicant asserts that because he now has four years of engineering experience, the test results from the other state should be transferred to North Dakota to enable him to become registered in North Dakota. The board has denied the applicant's request to transfer the examination results to North Dakota.

Your letter raises the following issues:

May the board refuse to accept the results of a principles and practice of engineering examination given in another state before the applicant had applied for registration in North Dakota, even though that examination is the same one given in North Dakota?

May the board refuse to accept registration by endorsement where the registration in the other state was based upon standards lower than North Dakota?

The first issue is controlled by N.D.C.C. § 43-19.1-14 which provides in part, as follows:

43-19.1-14. REGISTRATION WITH EXAMINATION
--PROFESSIONAL ENGINEERS. An applicant otherwise qualified shall be admitted to registration as a professional engineer, if he has successfully passed a written examination of not less than eight hours in the principles and practice of engineering, as prescribed by the board, and has one of the following additional qualifications.

1. Is a graduate of an engineering curriculum of four years or more approved by the board . . . and . . . an additional four years or more of experience in engineering work . . . and who holds a valid engineer-in-training certificate.

* * *

(Emphasis added.)

Because N.D.C.C. § 43-19.1-14 requires that an applicant pass a written examination "as prescribed by the board," the board has authority to determine what examination must be taken and when. The board may require that the applicant pass an examination actually conducted by the board. The board may also require that the applicant apply for registration and be otherwise approved by the board prior to taking the examination.

N.D. Admin. Code § 28-02-03-03(4) provides that "no applicant may be admitted to the examination until the applicant's application has been received, processed, and approved by the board." Because the applicant had not made application to the board at the time he took the examination in the other state, his taking of the examination was not in compliance with the rule.

N.D. Admin. Code §28-02-03-01(5) appears to require that an applicant have four or more years of experience in order to be eligible to take the examination. However, because the rule paraphrases the text of N.D.C.C. §43-19.1-14 (and, in so doing, misstates the statute), it is not a proper rule pursuant to N.D.C.C. §28-32-02. Therefore, this particular rule may not be considered in resolving the issue.

The board's powers include only those set forth in the North Dakota Century Code and applicable rules of the North Dakota Administrative Code. Because the rules establish the requirement of obtaining the board's approval prior to taking the exam, and in the absence

of a specific statute or rule which would require the board to accept the results of an engineering examination given in another state prior to application for registration, the board has the authority to refuse to permit the applicant to use such a test result to meet the North Dakota registration requirements.

Therefore, it is my opinion that, pursuant to N.D.C.C. § 43-19.1-14 and N.D. Admin. Code §28-02-03-03(4), the board may refuse to accept the results of an applicant's principles and practice of engineering examination which was administered in another state prior to his application for registration in North Dakota.

Although the board may refuse to accept the examination results in this case pursuant to N.D. Admin. Code § 28-02-03-03(4), it appears that the rule may be unfair as applied to these facts. The separate examination and experience requirements serve two different purposes, and it is difficult to articulate a reason for the board requiring that the examination be taken after four years of experience.

The second issue involves N.D.C.C. § 43-19.1-13 and N.D. Admin. Code §28-02-01-04.

N.D.C.C. §43-19.1-13 provides in part, as follows:

43-19.1-13. REGISTRATION WITHOUT EXAMINATION PROFESSIONAL ENGINEERS. An applicant otherwise qualified shall be admitted to registration as a professional engineer without examination if he is:

1. A person holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to him by a proper authority of state, . . . and who, in the opinion of the board, . . . meets the requirements of this chapter . . . (Emphasis added.)

N.D. Admin. Code § 28-02-01-04 provides in part, as follows:

28-02-01-04. REGISTRATION BY ENDORSEMENT.

1. An engineer registered in another state may be registered in this state by endorsement if all of the following are met:
 - a. The requirements under which the engineer is registered in the other state do not conflict with North Dakota Century Code chapter 43-19.1 and of a standard not lower than specified in sections 28-02-01-01, 28-02-01-02, and 28-02-01-03

* * *

(Emphasis added.)

N.D.C.C. § 43-19.1-13 permits a person registered as an engineer in another state to be registered in North Dakota without examination if he meets the requirements of the chapter, including administrative rules adopted by the board. The statute requires that the applicant's out-of-state registration be issued "on the basis of comparable qualifications." N.D. Admin. Code §28-02-01-04 specifically provides that in order for an engineer registered in another state to be registered in North Dakota by endorsement his registration in the other state must have been under requirements of a standard not lower than those specified in the board's rules.

The applicable statutes and rules specifically require that in order for an engineer to be registered in North Dakota he must have at least four years of experience. Because the applicant in the present case did not have four years of experience at the time he was registered in the other state, he does not qualify for registration by endorsement in North Dakota.

Therefore, it is my opinion that the board may refuse to register the applicant by endorsement.

Please be advised that the opinions contained herein are specifically limited to the facts as set forth above.

Sincerely,

Nicholas J. Spaeth

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