

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 17, 1974

To Harry E. Cummings, Chairman

Board of Registration of
Dept. Professional Engineers

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Registration of Geologists and Soils Scientists

In your letter under date of July 26, 1974 addressed to the Attorney General, you pose the following inquiry:

"Is a state-certified soils scientist or geologist, not registered with the State Board of Registration for Professional Engineers or exempted by law, who performs the services and furnishes the soils report described in the shoreland zoning guidelines, engaged in the practice of professional engineering in violation of 32 M.R.S.A. § 1256?"

The answer is no.

The proper criterion for determining whether a state-certified soils-scientist or geologist must also possess a license as a professional engineer is not whether some service he performs might be lawfully performed by an engineer, but whether or not such service is necessarily exclusively categorized as professional engineering.

The determinative test as to what constitutes the practice of professional engineering is, in the exact words of the statute (32 M.R.S.A) § 1251(3), whether or not "such professional service requires the application of engineering principles and data."

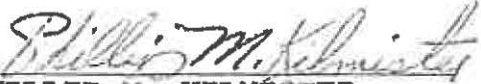
The practice of professional engineering as set forth in 32 M.R.S.A. § 1251(3) and (4) and the practice of geology and soil science (including pedology) as set forth in (P.L. 1973, c. 558) , (32 M.R.S.A. § 4902) are not mutually exclusive, and the line of demarcation between the sciences may be sometimes difficult to discern.

In the future, whether soils scientists trespass into the area of "engineering" and vice versa, whether professional engineers exceed the bounds of their profession by engaging in the practice of "soil science," will, in the final analysis, have to be determined on a case by case basis.

In a case concerned with the need as to whether or not engineers should also be licensed as architects, the Supreme Court of Utah has summarized the problem relating to multiple licensure in the following language:

"The mere fact that a licensed profession extends in some degree into the field of some other licensed occupation, does not require the licensee to have a license in each of the fields into which his profession may overlap, unless the statutes impose such requirement. If a person had to have a license in each field into which his chosen profession or calling might overlap in some degree, he might not only

have to obtain numerous licenses in different fields in which he is specially trained and qualified , but he might be prevented from engaging in the field in which he is particularly well qualified for the reason he could not meet all of the qualifications for license in other fields." Smith v. American Packing & Provision Co., 102 Utah etl, 130 P. 2d 951 (1942)."


PHILLIP M. KILMISTER
Assistant Attorney General

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