

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

VS.

MISSISSIPPI STATE BOARD OF
REGISTRATION FOR PROFESSIONAL
ENGINEERS & LAND SURVEYORS

APPEAL FROM THE MISSISSIPPI BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS & LAND SURVEYORS

APPELLANT'S REPLY BRIEF

APPELLANT REQUESTS ORAL ARGUMENT

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APPELLEE'S STATEMENT REGARDING ORAL ARGUMENT

Because this case involves fundamental aspects of Mississippi law protecting the vested property rights of individuals, the Appellant, (" "), requests that he/she be heard.

DISCUSSION

believes that the Court needs little additional argument, but wishes to correct some factual and legal errors contained in the brief of the Mississippi State Board of Registration for Professional Engineers and Land Surveyors ("State Board"). The State Board says that its rule regarding comity applicant's requirement for two professional examinations "was clearly disclosed in all registration application" State Board Brief at 11.

The implication is that either knew or should have known of the State Board's rule at the time he/she applied because the rules were sent to all applicants. At the federal hearing, testified that the application packet he/she received contained the statutes and the application form. (Exhibit 8 at 16) After he/she received notice that his/her previously-issued license was "revoked," contacted the State Board. He/She was sent another packet, which did contain the State Board's rules. But denied that the first packet contained the rules. (Ex. 8at59)

His/Her conduct, contemporaneous to his/her making application to the State Board, indicates that [redacted] was not aware of the Rules. First, his/her irate phone call to the State Board shows he/she was well aware that he/she qualified under the unambiguous terms of the Mississippi comity statute. (Ex. 8 at 47-49) So he/she did read the materials provided him/her. Second, [redacted] was weighing going to either [redacted] or [redacted]. Since he/she was already licensed in [redacted], if he/she had known that Mississippi required two exams, [redacted] would simply have attended the [redacted] school.

The State Board's argument that the statutory regime for Mississippi residents requiring two examinations while the comity statute did not was somehow fundamentally unfair to Mississippians is an argument to make to the legislature. State Board brief at 19. Neither courts nor administrative bodies may alter the positive statutory law of the State. Only the legislature may do that.

Moreover, the State Board's notion that Mississippi residents were required in every instance to take two examinations is factually incorrect. Section 73-13-23, as it existed at the time [redacted] applied, provided two alternative routes to registration as a professional engineer. An applicant could study at an accredited school, take the FE exam, and with only four years of experience could take the PE examination. However, an applicant with at least eight years of qualifying experience subsequent to graduation from high school could take the "examination designed to show knowledge and skill approximating that attained through graduation" from an approved curriculum. Miss. Code Ann. § 73-13-23(1)(b).

This provision allowed qualifying applicants an alternative route to graduation, taking the FE, gaining the prescribed type and duration of experience, and then taking the PE. The State Board attempts, in a wholly conclusory manner, to persuade the Court that the State Board has some interpretive gift allowing the Board to know the true state of the law. State Board brief at 19. There is nothing ambiguous about these statutes. They do not create a highly complex administrative structure such as the federal social security or labor law statutes.

In those kinds of highly complex administrative environments courts should listen to the information and experience of those charged with the application of complex laws. The policy is simple: courts are not engaged in the daily give and take of applying large-scale programs. Courts ultimately decide what the law is but should not overlook their own inexperience in such areas of legal application.

But this case does not involve anything like the Wagner Act governing employer-union relations, or the Internal Revenue Service's interpretation of tax law. Where the statutes are not ambiguous or involve complex issues about which an agency may develop expertise, the body of law cited by the State Board is simply irrelevant. State Board brief at 19-20.

The State Board also disingenuously argues that "[t]o issue a license in a manner contrary to, and inconsistent with, the Board's own rules and regulations would constitute a prohibited act which might potentially subject the Board to liability from those whom the Board failed to license on the same grounds that caused the Board to revoke or void Appellant's license." The State Board's first obligation is to enforce the positive statutory law. If its rules conflict with the statute, and the State Board acts in conformity with the rule, the prohibited act lies in applying

the rule rather than the statute. Moreover, cannot be responsible for any liability the State Board's defalcations may create.

Finally, never compared the State Board with . addressed the deleterious affects on the social fabric of arbitrary government. Administrative bodies acting beyond their authority are by definition acting outside the discretion granted to make rules. Whether the persistent arrogance of this State Board is based on ignorance or ego is irrelevant. That the men on the Board do the best they can does not relieve them of responsibility for mistakes. The State Board cannot divorce responsibility from the authority with which Mississippi law endues them. If our social policy is to promote responsible actions from welfare recipients, can we expect less from the State Board?

Respectfully submitted,

Attorney for ,