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MARK E. AMODEI  
SENATOR  
Capital Senate District

ASSISTANT MAJORITY WHIP

COMMITTEES:

*Vice Chairman*  
Transportation

*Member*

Commerce and Labor  
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# State of Nevada Senate

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March 12, 2002

VIA FACSIMILE AND U.S. MAIL

Bruce Robb, Esq.  
201 West Liberty, Street  
Reno, Nevada 89501

Re: Application to Take Nevada P.E. Exam: J.R. Hilderbrand

Dear Bruce:

Some time ago, I was made aware of a decision by a constituent regarding the Board's refusal to allow J.R. Hilderbrand to sit for last April's P.E. exam. This circumstance resulted from a determination on the equivalent experience provisions contained in Chapter 625 of the Nevada Revised Statutes. I apologize for my delay in checking the background facts and obtaining the assistance of the Legislative Counsel Bureau, but at present, as a result of these factual checks and the enclosed LCB opinion, I am at somewhat of a loss as to the position of the Board with respect to its refusal to acknowledge the statutorily mandated applicability of a non-engineering degree toward the active experience requirement in NRS 625.183(4)(a)

As you can see from the enclosed opinion, the statutory requirement of the applicability of non-engineering degrees to the experience requirement appears to be fairly clear. I also understand from a review of the file on the refusal to allow Mr. Hilderbrand to sit for the exam, that there was no record made on the applicability of his submitted subdivision (b) direct supervision experience being a problem, rather it was the Board's refusal to allow the use of a non engineering degree as and for 2 years equivalent experience under Subdivision 4(a).

I have requested Mr. Hilderbrand to update his P.E. exam application and submit it forthwith, with the appropriate fees for the upcoming exam. I have done this in the belief that a review of the enclosed LCB opinion will provide a reasonable basis on which the Board should recognize the statutorily mandated grant of equivalent experience for non-engineering degrees. This information coupled with the passage on another year of Subdivision (4)(b) experience, which was not

Bruce Robb, Esq.  
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questioned by the board last year, should present what I hope is a non-controversial opportunity for a qualified Nevadan to sit for this year's P.E. exam.

If for some reason I have misunderstood the applicable factual background or the Legislative Counsel Bureau has failed to properly render an opinion on the language contained in the above cited statute, I would appreciate the opportunity to discuss your Board's thoughts on said issues. Finally, as I know this year's P.E. exam is next month, I would appreciate any expedited consideration you could obtain from your Board on the foregoing issue.

Kindly advise.

Cordially,



Mark E. Amodei

MEA/la  
Enclosure

cc: George Thiel, P.E.

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February 25, 2002

Senator Mark Amodei  
402 N. Division St.  
Carson City, NV 89703-4168

Dear Senator Amodei:

You have asked this office to describe the qualifications regarding active experience that a person who is a graduate of an approved engineering curriculum must meet to be eligible for licensure as a professional engineer in this state. In addition, you have asked whether graduation from a college or university in a field other than engineering must be counted by the State Board of Professional Engineers and Land Surveyors (Board) toward the statutory amount of active experience required of applicants for licensure, or whether the Board has administrative discretion in applying the provisions of subsection 4 of NRS 625.183.

To engage in the business of a professional engineer in the State of Nevada, a person must be licensed by the Board. The general qualifications which a person must meet to be eligible for licensure as a professional engineer are set forth in NRS 625.183. Subsections 3 and 4 of NRS 625.183 set forth the requirements regarding the experience which is required of applicants for licensure, and read:

3. An applicant for licensure as a professional engineer may not take the examination on the principles and practices of engineering, unless he:

(a) Is a graduate of an engineering curriculum of 4 years or more that is approved by the board and has a record of 4 years or more of active experience in engineering that is satisfactory to the board and indicates that he is competent to be placed in responsible charge of engineering work; or

(b) Has a record of 10 years or more of active experience in engineering work that is satisfactory to the board and indicates that he is competent to be placed in responsible charge of engineering work.

4. To determine whether an applicant for licensure as a professional engineer has an adequate record of active experience pursuant to paragraph (a) of subsection 3:

(a) Graduation from a college or university in a field other than engineering is equivalent to 2 years of active experience.

(b) Two of the 4 years of active experience must have been completed by working under the direct supervision of a professional engineer who is licensed in the discipline in which the applicant is applying for licensure, unless that requirement is waived by the board.

(c) The execution, as a contractor, of work designed by a professional engineer or the supervision of the construction of that work as a foreman or superintendent, is not equivalent to active experience in engineering.

The provisions of paragraph (a) of subsection 3 of NRS 625.183 set forth the general qualifications required of a graduate of an approved curriculum in engineering to take the licensure examination. Such a graduate must have "a record of 4 years or more of active experience in engineering that is satisfactory to the board and indicates that he is competent to be placed in responsible charge of engineering work." However, it is important to note that the provisions of paragraph (a) of subsection 4 of NRS 625.183 provide direction to the Board for use when it calculates the acceptable combination of education and experience that meets the prerequisite number of years of active experience in engineering. Specifically, paragraph (a) of subsection 4 states that "[g]raduation from a college or university in a field other than engineering is equivalent to 2 years of active experience." Thus, if an applicant is a graduate of an approved curriculum in engineering and a graduate of a college or university in a field other than engineering, he is deemed to have 2 years of active experience in engineering.<sup>1</sup> Such an applicant would be eligible for licensure as a professional engineer after completing only 2 additional years of active experience in engineering if the 2 years of additional active experience is satisfactory to the Board and indicates that the applicant is competent to be placed in responsible charge of engineering work.

As a general rule of administrative law, if a state agency is given the power to administer certain statutes then, by implication, the agency is clothed with the power to interpret those statutes as a necessary incident to its power of administration. Great deference should be given to the agency's interpretation when it is within the language of the statute. Clark County Sch. Dist. v. Local Gov't Employee-Mgmt. Relations Bd., 90 Nev. 442, 446 (1974). In contrast, an interpretation by the Board which is contrary to the language of a statute will not be upheld. Aside from the statutory directions set forth in

<sup>1</sup> In 1999, the Nevada Legislature repealed paragraph (a) of subsection 4 of NRS 625.183 in Senate Bill No. 103, effective July 1, 2010. After that date, graduation from a college or university in a field other than engineering no longer may be used in determining the number of years of active experience in engineering possessed by an applicant for licensure as a professional engineer.

subsection 4 of NRS 625.183, there are no specific statutory or regulatory provisions that provide guidance as to what factors the Board is required to or actually does consider in making its determination as to the competency of an applicant. Within constitutional and statutory constraints, the Board may use its discretion to make these determinations. Consequently, in the case of an applicant who is a graduate of both an approved curriculum in engineering and a college or university in a field other than engineering, if the Board, after giving 2 years' credit pursuant to paragraph (a) of subsection 4 of NRS 625.183, does not find the remaining 2 years of active experience of the applicant to be satisfactory and indicative of engineering competency, the Board could deny his application for licensure as a professional engineer. The Board may not, however, ignore the statutory direction of paragraph (a) of subsection 4 of NRS 625.183 and refuse to count an applicant's graduation from a college or university in a field other than engineering as satisfying 2 of the 4 years of required active experience.

The judicial review of a final decision made by an agency is governed by NRS 233B.135 which provides, in pertinent part:

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- \* \* \* \*
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

In addition to determining whether an agency has acted in violation of a constitutional or statutory provision, the function of the court is to ascertain whether the administrative agency has abused its discretion by acting arbitrarily or capriciously. High v. State, Dep't of Motor Vehicles, 93 Nev. 305 (1977). Decisions of an administrative agency on questions of fact will be affirmed if there is substantial evidence to support them. Helms v. State, Div. of Envtl. Prot., 109 Nev. 310 (1993). Thus, the decision of the Board as to whether the remaining 2 years of active experience in engineering of an applicant is satisfactory and indicative of engineering competency will not be disturbed by a court unless the court finds that the determination of the Board is contrary to a constitutional or statutory provision, or is arbitrary or capricious and not supported by substantial evidence.


In conclusion, it is the opinion of this office that, pursuant to paragraph (a) of subsection 4 of NRS 625.183, a person who is a graduate of an approved engineering curriculum and who is also a graduate of a college or university in a field other than

engineering is statutorily deemed to have acquired 2 years of active experience in engineering and that such an applicant would be eligible for licensure as a professional engineer after completing only 2 additional years of active experience if the additional active experience is satisfactory to the Board and indicates that the applicant is competent to be placed in responsible charge of engineering work. Further, it is the opinion of this office that the decision of the Board as to whether the remaining 2 years of active experience in engineering of an applicant is satisfactory and indicates that the applicant is competent to be placed in responsible charge of engineering work will not be disturbed by a court unless the court finds that the determination of the Board is contrary to a constitutional or statutory provision, or is arbitrary or capricious and not supported by substantial evidence. The Board may not, however, ignore the statutory direction of paragraph (a) of subsection 4 of NRS 625.183 and refuse to count an applicant's graduation from a college or university in a field other than engineering as satisfying 2 of the 4 years of required active experience.

If you have any further questions regarding this matter or would like to request a bill draft to clarify or amend the manner in which the Board must determine the adequacy of the active experience in engineering of an applicant for licensure as a professional engineer for purposes of establishing eligibility for licensure, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes  
Legislative Counsel

By   
Kimberly A. Morgan  
Chief Deputy Legislative Counsel

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