

95-00135

OFFICE OF THE ATTORNEY GENERAL



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STATE OF ALABAMA

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ALABAMA STATE HOUSE
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MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable James S. Clark
Speaker, House of Representatives
State of Alabama
Montgomery, Alabama 36130

Engineers - Licenses and
Permits - Municipalities

A municipality may not impose a municipal license tax on engineering and/or land surveying firms not having a place of business in the municipality, but providing professional services there, unless it can be shown that a sufficient nexus with city has been established. Stated differently, providing professional services in a city on a regular and continuing basis establishes a sufficient nexus for the imposition of a business privilege license.

Dear Mr. Speaker Clark:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

I am writing to request an Attorney General's opinion concerning whether engineering and/or land surveying firms are required to purchase business licenses

in municipalities where they do not maintain a physical place of business, but do provide professional services.

FACTS AND ANALYSIS

Code of Alabama 1975, § 11-51-90(a) states:

"All municipalities shall have the power:

"(1) To license any exhibition, trade, business, vocation, occupation or profession not prohibited by the Constitution or laws of the state which may be engaged in or carried on in the city or town . . ."

This empowerment of the municipality would appear to authorize the licensing of any profession practiced within the corporate limits of any municipality. However, this office held in an opinion to Honorable Charles L. Murphree, under date of March 18, 1980, A.G. No. 80-00266, that the nature of the practice of architecture precludes an assumption that architectural services are performed on site in the municipality seeking to impose the license, as opposed to being performed in the office. Stated differently, this office was unable to assume that the services performed within the municipality were enough to establish the nexus required for imposition of a business privilege license.

The practice of engineering and land surveying is similar to the practice of architecture. Therefore, in order for a municipal license tax to be imposed on an engineering and/or land surveying firm in a municipality where the firm does not maintain a place of business, but does provide professional services, a nexus with the municipality must be established.

Furthermore, the following was stated in an opinion of the Attorney General to Honorable Sam E. Loftin, Attorney at Law, Phenix City, dated February 14, 1986, A.G. No. 86-00163:

"Considering your question, the Attorney General is of the opinion that the power of the City of Phenix City to require nonresident attorneys to buy a

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business license to practice law in that city is dependent upon the amount of time the attorney actually spends in the practice of law in Phenix City. If an attorney only comes to Phenix City occasionally and spends only a few hours there each time practicing law, the City of Phenix City cannot require him to buy a business license to practice law there. However, if the attorney comes to Phenix City frequently or on a regular and routine basis to practice law there and/or if he practices in the courts in that city on a regular or routine basis, the city may require the attorney to buy a business license."

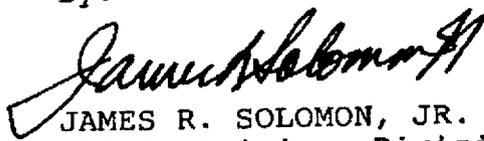
CONCLUSION

A municipality may not impose a municipal license tax on engineering and/or land surveying firms not having a place of business in the municipality, but providing professional services there, unless it can be shown that a sufficient nexus with city has been established. Stated differently, providing professional services in a city on a regular and continuing basis establishes sufficient nexus for the imposition of a business privilege license.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CJS/cw
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