

college, primarily engaged in concrete construction. In 1988, he acquired an M.S. from the University of Washington, College of Engineering.

2. Mr. Squires attempted to obtain a license to practice engineering in Washington after obtaining his master's degree, but was refused permission to sit for the FE exam. Mr. Squires did not seek a waiver from the examination requirement. He also looked into obtaining an engineering license in Idaho, New Hampshire and Texas. He successfully passed the professional engineer (PE) examination, but he has never been licensed as an engineer in any jurisdiction. While living in Washington after obtaining his master's degree, Mr. Squires continued to work in the construction trade, primarily engaged in concrete construction. His work experience includes employment as a cement mason and concrete contractor, as well as field testing and sampling for concrete products and some concrete design work. He also performed some consulting work relating to concrete materials and construction. The details of his work experience are discussed in Part IV-B below.

3. In 1993, Mr. Squires moved his permanent residence to Alaska where he continued to work primarily in concrete construction up to the present. On December 9, 2003, Mr. Squires filed an "Application for Engineer or Land Surveyor by Examination or Comity," seeking to become a licensed professional engineer in Alaska. The second page of the application contains the notation "REQ FE WAIVER." On January 12, 2004, Mr. Squires filed an "Application for Fundamentals of Engineering (FE) or Fundamentals of Land Surveying (FLS) Examination."⁴ Applications and forms filed with the board in this case were provided through the division and identify Board of Registration for Architects, Engineers and Land Surveyors at their beginning.⁵ The Board of Architects, Engineers and Land Surveyors approved Mr. Squires to take the FE exam and later met with him and considered his application to waive the requirement to take the exam. Thereafter, the board deliberated in executive session. As a result of the deliberations, the board denied the waiver request on the basis that Mr. Squires had not verified "20 years of professional experience" as required by 12 AAC 36.090(a). Mr. Squires requested a hearing.

III. Discussion

The central issues in this case relate to whether Mr. Squires should be required to pass the fundamentals of engineering examination as a requirement of licensure. Mr. Squires made the

⁴ The affidavit is not properly notarized, thus calling into question whether Mr. Squires's representations may be relied upon as made under oath as required by AS 08.48.201(a)(2). However, the board appears to have accepted the application.

⁵ The January 12, 2004, application for FE exam is the only document that does not identify the board at its beginning, although the exam is obviously within the purview of the AELS board.

following arguments to support his position that the FE exam requirement should not apply to him: (1) he submitted satisfactory evidence to the board to verify 20 years of professional experience as required by 12 AAC 36.090(a); (2) the division's requirement that an applicant for a waiver submit third party verifications of his professional experience is ineffective because it is a rule that was not adopted by regulation; (3) first party verifications to establish professional experience may not be discounted by the board; (4) the board's procedure in handling Mr. Squires's application was flawed because the board did not deliberate and provided no rational basis for its decision; (5) the board's acting in executive session violated the Open Meetings Act; (6) the board erred in giving only partial credit for work experience gained in a crafts position not directly under the supervision of a licensed engineer, denying Mr. Squires due process; (7) the board denied Mr. Squires due process by requiring him to take the FE exam after he had passed the PE exam; (8) the board's experience verification licensing criterion, on its face and as applied to Mr. Squires, violates due process as not rationally related to the goal of maintaining professional competence; and (9) the board's treatment of Mr. Squires discriminates against him in violation of equal protection of law through imposing on him a more onerous waiver option from the FE exam requirement than that applied to others.

The division argued that the board acted within its discretion in determining that Mr. Squires did not meet the requirement of 12 AAC 36.090 that an applicant submit "satisfactory evidence . . . to the board to verify 20 years of professional experience," and that the board properly acted within its discretion in relying on the Alaska Work Experience Verification Forms. The division did not address Mr. Squires's constitutional arguments.

The parties' arguments involve the interplay of licensing statutes under AS 08.48 and regulations adopted under that authority. In the remaining discussion, Alaska's licensing requirements to practice engineering will be addressed first, with discussion of applicable statutes followed by discussion of applicable regulations. Next, the discussion will focus on 12 AAC 36.090, the regulation at issue providing for waiver of the FE exam including the board's application of the regulation to Mr. Squires, analyzing each of Mr. Squires's nine arguments in turn.

A. Licensing Requirements to Practice Engineering

AS 08.48 (Architects, Engineers, and Land Surveyors) – AS 08.48 establishes the requirements for licensure as an engineer in Alaska. General requirements are set forth in AS 08.48.171. The statute provides that an applicant "must be of good character and reputation and

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JAN 30 2006

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shall submit satisfactory evidence to the board of the applicant's education, training, and experience.⁶ AS 08.48.181 addresses the examination requirement. This statute provides that, except for those individuals seeking to practice engineering by comity when registered or licensed in another jurisdiction, an individual

shall be examined in this state in accordance with the regulations of procedure and standards adopted by the board under AS 44.62 (Administrative Procedure Act). The procedure and standards shall at least meet the requirements adopted by recognized national examining councils for these professions.⁷

AS 08.48.201 addresses the written application to be used for registration as a professional engineer. Subsection (a) of the statute provides that the application shall

- (1) be on a form prescribed and furnished by the board;
- (2) contain statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical experience; and
- (3) contain five references, three of whom must be . . . engineers for engineering registration, . . . having personal knowledge of the applicant's . . . education, training, or experience.

AS 08.48.211 provides that a successful applicant shall be granted a certificate of registration by the board.

12 AAC 36 (Architects, Engineers, and Land Surveyors) – In addition to the board's statutory charge in AS 08.48.181 to adopt regulations pertaining to the examination, the board has broad discretionary authority to adopt regulations under AS 08.48.101.⁸ The board adopted regulations at 12 AAC 36.010 – .195 addressing registration and licensing. 12 AAC 36.010 prescribes criteria for written applications. Subsection (a) provides “An application for examination . . . must be typewritten and filed with the board on a form prescribed by the board,

⁶ (emphasis added).

⁷ Under AS 08.48.091, a written examination “shall be held at least once each year at places determined by the board.”

⁸ AS 08.48.101(a) provides

The board may [emphasis added] adopt regulations to carry out the purpose of this chapter, including regulations

- (1) describing the contents of an examination;
- (2) establishing the conduct of an examination;
- (3) establishing a minimum score for passing an examination;
- (4) establishing bylaws governing its meetings and activities;
- (5) publishing a code of ethics or professional conduct for those persons regulated by this chapter, including corporations, limited liability companies, and limited liability partnerships under AS 08.48.241;
- (6) establishing continuing education requirements for persons regulated by this chapter that must be completed before a certificate may be renewed; the continuing education requirements may not exceed standards established by a national accrediting body or other recognized professional organization.

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JAN 30 2006

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accompanied by the application fee established in 12 AAC 02.110.” Subsection (c) states “The board will approve an application for examination . . . if . . . (3) all supporting documents have been received by the board verifying that the applicant meets the registration requirements in AS 08.48 and this chapter.”⁹ Subsection (i) states “In this section, ‘all supporting documents required for board review’ means documentation of the applicant’s education, work experience, and responsible charge experience, as required by AS 08.48 and this chapter.” (emphasis added) 12 AAC 36.062 addresses eligibility for the FE exam, including a detailed table of education and work experience requirements.

12 AAC 36.090 allows for waiver of the FE examination requirement. Subsection (a) of the regulation states that an individual applying “for registration as a professional engineer who has not passed the fundamentals of engineering examination need not take that examination if satisfactory evidence is submitted to the board to verify 20 years of professional experience.” (emphasis added) The definitional provision at 12 AAC 36.990(a)(18) states that “[f]or the purposes of this chapter and AS 08.48, unless the context requires otherwise:”

“Professional work” means the time the applicant has been occupied in architecture, engineering, land surveying, or landscape architecture work of higher grade and responsibility than that of subprofessional work.

“Subprofessional work” is thereafter defined in 12 AAC 36.990(a)(22) as

time spent working as rodman, chainman, recorder, draftsman, clerk of works, instrument man, inspector, or similar work where personal responsibility and technical knowledge are slight.

B. Mr. Squires’s Request for Waiver From the FE Examination Requirement (12 AAC 36.090)

Mr. Squires met the requirements to sit for the FE examination and was approved by the board to sit for exam. He was denied an exam waiver under 12 AAC 36.090(a), however, because the board determined that he did not meet the requirement “to verify 20 years of professional experience.” Discussion of the parties’ arguments in this appeal regarding waiver of the FE exam requirement starts with the language of the regulation at issue.

“Satisfactory evidence,” “verify,” and “professional experience” from 12 AAC 36.090(a) are not defined in the regulation or elsewhere in 12 AAC 36, although, as noted above, the potentially related phrase “professional work” does have a definition. Case law in Alaska recognizes that a state agency (board) is entitled to deference in interpreting statutes it has been

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JAN 30 2006

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⁹ 12 AAC 36.010(c)(3).
OAH No. 05-0198-AEL

charged to administer and in interpreting its own regulations so long as the agency's judgment is reasonable, not arbitrary, and consistent.¹⁰

The word "verify" has a commonly understood meaning from the dictionary. Verify is defined to include proving the truth or establishing the accuracy of a matter.¹¹ It also may mean to affirm formally or under oath,¹² as is required in this case by AS 08.48.201(a)(2) and 12 AAC 36.010, both of which require that the applicant make statements under oath. All of these definitional possibilities have the effect of placing the burden on Mr. Squires to establish that he meets the requirement for waiver from the FE exam to show "satisfactory evidence" for "20 years of professional experience."

In contrast, placing the burden on the division to verify representations in an application, including education and work experience, would create an undue administrative burden.¹³ The agency may justifiably rely on an applicant's verification under oath that his answers to questions in the application are truthful and complete. AS 44.62.460(e)(2), a provision of the APA, further supports a conclusion that Mr. Squires has the burden to provide satisfactory evidence to the board to obtain waiver of the FE exam, as it places the burden of proof on a license applicant.

Next, the parties have addressed the meaning of "satisfactory evidence." The board interpreted "satisfactory evidence" from 12 AAC 36.090(a) as referring to evidence that the board deems satisfactory. This is a reasonable interpretation of the regulation because under AS 08.48.171, which provides general requirements and qualifications for registration, an applicant for registration as an engineer "shall submit evidence satisfactory to the board of the applicant's . . . experience." (emphasis added) In contrast, interpreting "satisfactory evidence" from 12 AAC 36.090(a) as allowing the applicant to make the determination, as Mr. Squires argues, would substantially emasculate the board's oversight of initial applicants and contravene the

¹⁰ See, e.g., Board of Trade, Inc. v. State of Alaska, 968 P.2d 86, 89 (Alaska 1998)(agency interpretation of its own regulations reviewed under the reasonable basis standard); State of Alaska v. Renwick, 936 P.2d 526, 531 (Alaska 1997)(administrative agencies given wide latitude when they are interpreting statutes they have been charged to administer); Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 161 (Alaska 1982)(agency is best able to discern its intent in promulgating a regulation).

¹¹ See Webster's II New Riverside University Dictionary, p. 1282 (1984).

¹² See id.

¹³ An applicant's obligation to provide accurate information to a licensing authority is non-delegable. See Matter of Moser, Case No. 04-0294-REC (June 14, 2005 Decision). The individual's personal accountability is indicated by the certification above a signature and by requiring the signature to be sworn. As a practical matter, the licensing agency (division) may not have the resources to investigate all of the representations in thousands of new and renewal applications it receives each year in processing licenses. See Wilkerson v. State of Alaska, 993 P.2d 1018, 1025-26 (Alaska 1999)(government interest includes fiscal and administrative burdens an additional procedural requirement would entail).

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legislature's charge that the board determine whether satisfactory evidence exists for licensure. The determination regarding who is eligible for the FE waiver is at its core an exercise of the board's discretion. Accordingly, "satisfactory evidence" as used in 12 AAC 36.090(a) must be determined by the board.

The last term at issue is "professional experience" from 12 AAC 36.090(a). The words are not defined in AS 08.48 or 12 AAC 36. However, 12 AAC 36.990(a)(18) provides guidance to determine its meaning through the definition of "professional work." The provision defines the term to include "the time the applicant has been occupied in engineering . . . of higher grade and responsibility than that of subprofessional work."¹⁴

Filings in this case show that the board has been consistent in interpreting "professional experience" to mean "professional work" as defined at 12 AAC 36.990(a)(18). The license application instructions include a paragraph entitled Statement of Experience that refers to "professional work experience" and a paragraph addressing Work Experience that refers to "professional work experience" as a type of work experience.¹⁵ The board's verification form is entitled Engineering Work Experience Verification on page one. A second page of the form is entitled Engineering Professional Work Experience Verification.¹⁶ An instruction at the bottom of page one indicates that page two is for completion by a professional engineer to identify an applicant's professional work experience. The last question on the second page of the verification form, located after the signature, states "Were you registered at the time you supervised applicant?" The division's correspondence with Mr. Squires also addresses the professional criterion. An August 23, 2004, letter from the division to Mr. Squires references "professional experience," "professional work experience," and "professional time."¹⁷ A February 24, 2005, letter from the division to Mr. Squires references "professional engineering work experience."¹⁸ The contexts for these terms as used in the application and the two letters all pertain to professional work experience in engineering. "Professional experience" and "professional work," therefore, have the same meaning for the purpose of 12 AAC 36.090(a) when an individual seeks waiver from the FE exam requirement.

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JAN 30 2005

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¹⁴ Subprofessional work is defined at 12 AAC 36.990(a)(22).

¹⁵ Attachment to division's post hearing brief.

¹⁶ Exhibit 16.

¹⁷ Exhibit 28.

1. Mr. Squires's Attempt to Meet the Waiver Requirement – A waiver of the FE exam under 12 AAC 36.090(a) requires 20 years (240 months) of professional experience. In an attempt to meet the waiver requirement, despite having never been licensed as an engineer, Mr. Squires characterized his work as engineering, representing in his application materials that he had “approximately 294 months doing engineering work” and “nearly twenty-five years experience in engineering.” He provided five pages of past work experience under the caption **Engineering Experience**. Most of his work experience over the past thirty years was as a concrete construction contractor. He also provided services as a consultant, including one case that went to trial. Mr. Squires testified at the hearing “As a [construction] contractor, I’m allowed to do a lot of my own designing work.” Very little of Mr. Squires’s work was done under the supervision of an engineer, however, and he testified that for many of his jobs it was “company policy not to have a licensed engineer on the job.” He also testified that for the work he conducted in Juneau between 1994 and 2000, no professional engineer was required. Mr. Squires characterized the FE exam as an exercise in “engineering trivial pursuit” and stated that “absolutely nothing” would be demonstrated by his passing the FE exam.

Mr. Squires submitted Engineering Work Experience Verification and Engineering Professional Work Experience Verification forms from third parties who were professional engineers familiar with his work.¹⁹ The board met with Mr. Squires and reviewed the application materials he submitted. It gave him 100 hours of professional work experience in the engineering field, far less than the required 240 months needed for an exam waiver.²⁰ The parties’ arguments regarding the board’s authority to make that determination are addressed in the remainder of this discussion.

2. The Requirement for Third Party Verifications – Mr. Squires argues that the licensing requirement for an applicant seeking a waiver to submit third party verifications of his professional experience is ineffective because it is a rule that was not adopted by regulation as in accordance with the APA. Mr. Squires also argues that the division had no authority to act on behalf of the board, and he argues that it is not possible for him to locate and arrange for verifications from some professional engineers he worked with in the past. The division argued that adoption and use of the forms was within the wide discretion of the board to administer licensing.

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¹⁸ Exhibit 29.

¹⁹ Although the January 12, 2004, application is for the FE exam, the verification forms erroneously indicated that the applicant was applying to take the PE exam, not the FE exam.

The discussion will first address the need for a regulation under the APA. The Alaska Legislature broadly defines what constitutes a regulation under AS 44.62.640(a)(3) of the APA. A board practice constituting a regulation that does not comply with the APA may be declared invalid by the courts.²¹

An express exclusion from the definition at AS 44.62.640(a)(3) applies in this case. The statute provides:

“Regulation” does not include a form prescribed by a state agency or instructions relating to the use of a form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued.”²²

Applying this exclusionary language, the board’s verification form and instructions relating to its use do not constitute a regulation. The limitation language in this provision does not require the form and instructions to be adopted as regulations because no regulation is needed to implement the law under which the form is issued. A sufficient regulation already exists at 12 AAC 36.010. This regulation requires that an application for examination be typewritten and filed with the board “on a form prescribed by the board.”

The board’s license application in this case (exhibit A) fulfills this requisite. In the Applicant Instructions for Engineers, which accompanies the application, applicants are instructed to complete the Alaska Work Experience Verification Form. The instructions state that “[a]pplicants are required to have all examinations and required work experience verified by a third party using Alaska forms, and mailed directly to the Alaska board office.” Verification by this means is, therefore, one of the application documents.²³ As part of the “form prescribed by the board” under 12 AAC 36.010, it is not necessary for the board’s application form (including instructions and verification form) to be adopted as a regulation.²⁴

A Board of Nursing case involving an applicant who forged her employment verification form provides support for this conclusion. In Kimble v. State of Alaska, then Superior Court Judge Fabe affirmed the board’s determination to deny initial licensure. Validity of the board’s verification form was not at issue. However, the judge applied the Verification of Nursing

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²⁰ See Exhibit 29. Ten of the 100 hours were for subprofessional work.

²¹ See, e.g., Gilbert v. State of Alaska, 803 P.2d 391, 396-97 (Alaska 1990).

²² AS 44.62.640(a)(3) (emphasis added).

²³ See Instructions (attached as appendix), p. 2.

²⁴ Other boards and commissions provide for license applications and accompanying forms without adopting the documents in a regulation. E.g., 12 AAC 40.015(b)(1)(A) (physicians); 12 AAC 44.290(a)(1), .305 (nurses); 12 AAC 60.010(a) (psychologists). 12 AAC 64.060, pertaining to real estate licensees, requires “a completed application on the form provided by the department, including all necessary attachments.”

Employment form provided for by the board at 12 AAC 44.305(a)(4).²⁵ That provision addresses “a reference letter, on a form provided by the department.” Similarly, in this case the board has authority under 12 AAC 36.010 to rely on application forms and accompanying instructions that are not expressly set forth in a regulation.

Mr. Squires argued that the division’s use of licensing forms lacked authority. It appears that the division staff may have prepared the licensing application and forms. Under AS 08.01.050 and AS 08.48.071 the division has responsibility to act on behalf of the board, and an executive administrator and licensing examiner are employed for this purpose. Licensing examiner Vinson represented that the board required use of the verification forms.²⁶ The forms reflect that applicants have the burden to establish satisfactory evidence to verify 20 years of professional experience.²⁷ While it may be difficult, as Mr. Squires argues, for an applicant to track down former employers to obtain verifications, the law places the burden with the applicant, not the licensing agency. The board adopted the forms for its use as indicated by the inclusion of its name at the top of the documents and by the fact that it relies upon them in processing applications. Licensing forms used by the AELS board therefore were not unauthorized.

3. Discounting First Party Verifications – Mr. Squires argues that the first party verifications he provided with his application materials may not be discounted by the board when establishing his professional experience under 12 AAC 36.090. The argument raises the issue whether an applicant or the board has authority to determine if “satisfactory evidence is submitted to the board to verify 20 years of professional experience” to obtain an exam waiver. Under AS 08.48.171, 12 AAC 36.010, 12 AAC 36.062 and 12 AAC 36.090, final authority belongs to the board. The board therefore has discretion to discount first party verifications when determining an applicant’s professional experience. The board is not bound, as Mr. Squires argues, to accept his evidence of professional experience as determinative of the professional experience criterion at 12 AAC 36.090(a).

Mr. Squires cited some Commercial Fisheries Entry Commission cases for the proposition that that an administrative agency may not ignore documentation from an applicant or reject oral testimony from an applicant when supporting documentation is not provided. The

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JAN 30 2006

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²⁵ Kimble v. State of Alaska, Case No. 3AN-93-7883 Civil (October 26, 1994, Decision on Appeal).

²⁶ Testimony of Vinson; Testimony of Squires.

²⁷ See 12 AAC 36.090 (applicant need not take FE exam “if satisfactory evidence is submitted to the board to verify 20 years of professional experience”)(emphasis added).

cases involve factual contexts in which the agency committed error by ignoring or rejecting evidence.²⁸ In contrast, the board in this case did not overlook or choose to totally disregard first party verifications. It received them, considered them, and discounted them within its discretion as a licensing body. The administrative law judge in this proceeding also reviewed all of Mr. Squires's submissions.

4. Board Procedure in Deliberating – Mr. Squires argues that the board's procedure in handling his application was flawed because the board did not deliberate due to its delegation to two members, and that no "rational basis" was provided for the license waiver denial. Under AS 44.62.500 of the APA, a board has authority to go into executive session to deliberate on a license application.²⁹ This has been the board's practice.³⁰

Mr. Squires challenges the board's use of two members to review his application. According Nancy Hemenway, the former executive administrator for the board, teams of two board members conduct the initial review of applications. In this case, they made a recommendation to the board concerning Mr. Squires's waiver request. The board as a whole deliberated in executive session.³¹ Although it is unclear from the record how board members voted, according to licensing examiner Vinson, the board determined that Mr. Squires did not have enough professional experience under 12 AAC 36.090.³² The waiver request was denied. Ms. Vinson conveyed this information to Mr. Squires by letter on behalf of the board.

The division's February 24, 2005, letter to Mr. Squires, which constitutes a statement of issues under the APA, specifies "the statute and regulation with which the respondent must show compliance by producing proof at the hearing."³³ The letter also expresses the board's calculation of Mr. Squires's professional work experience, indicating that he only verified a total of 100 months and that 240 months is required under 12 AAC 36.090 for an exam waiver.

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JAN 30 2005

DIVISION OF
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²⁸ See, e.g., Lewis v. State of Alaska, 892 P.2d 175 (Alaska 1995).

²⁹ See, e.g., Rosi v. State Medical Board, 665 P.2d 28, 29 (Alaska 1983).

³⁰ Direct exam of Hemenway.

³¹ Board minutes state:

John Squires explained he is a PE, Civil Engineering applicant and has requested an FE waiver. He explained he has obtained a Masters degree in Civil Engineering, and has not taken the FE exam because he didn't have an undergraduate degree in engineering. He discussed his experience, and due to the itinerant nature of his construction work, he has not been able to have his work verified by a third party. He outlined some of his work experience for Board members. He spoke in favor of a mandatory continuing education program.

The Chair indicated his application would be reviewed in Executive Session and his comments would be taken into account. (Exhibit 27)

³² Mr. Squires conceded in closing argument that the board voted to deny his waiver request.

³³ See AS 44.62.370(a)(1).

Accordingly, the board provided a basis for its decision. The merits of that determination is another matter and it is addressed in the various sections of this discussion.

5. Applicability of Open Meetings Act (AS 44.62.310 – .312) – In contrast to his argument that no deliberations took place, Mr. Squires indicated in his opening statement that the board met in secret concerning his application thereby violating the Open Meetings Act.³⁴ The Open Meetings argument was not addressed during closing arguments or through post hearing briefs. No evidence in this case establishes that the board secretly met in violation of the Act. The board’s formal deliberations on Mr. Squires’s waiver request were allowed under AS 44.62.310(d)(1) of the Open Meetings Act (quasi-judicial function).

6. Partial Credit for Work in Crafts Position – Mr. Squires argued that the board’s treatment of him was flawed as violating due process in three areas. His first argument is that the board erred in giving only partial credit for work experience gained in a crafts position not directly under the supervision of a licensed engineer and that there is no rational basis for the board’s decision.³⁵ This argument is related to Mr. Squires’s prior argument that the board has no authority to discount first party verifications. As previously discussed, the board considered Mr. Squires’s first party verifications and discounted them within its discretion as a licensing body.

The central issues in this case involve the board’s determination of “professional experience” under 12 AAC 36.090. The board’s decision to only give Mr. Squires partial credit for craft labor unsupervised by a professional engineer is allowed under authority of AS 08.48.171 (satisfactory evidence required of work experience) and 12 AAC 36.010 (using a form prescribed by the board with all supporting documents verifying work experience). In this case the board determined that, while Mr. Squires has over 25 years experience in his craft (primarily concrete construction), he does not have 20 years of professional experience as an engineer under the regulation. Mr. Squires conceded that for much of his craft experience, direct supervision by a licensed engineer was neither normal nor available. In relying on the information provided by Mr. Squires through his application materials (including forms), other documents provided by Mr. Squires, and in meeting with Mr. Squires, the board’s decision has a rational basis.

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DIVISION OF
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³⁴ See AS 44.62.310, .312.

³⁵ Mr. Squires focuses on the law as applied and does not argue that a statute or regulation lacks a rational basis under constitutional due process analysis. He may raise the substantive due process argument in superior court.

7. Requiring FE Exam of Applicants Who Have Passed PE Exam – The second due process argument Mr. Squires raises is that the board denied him due process by requiring him to take the FE exam after he had passed the PE exam. According to Mr. Squires, this is a “legal requirement with no rational basis.” This substantive due process argument is, at bottom, a challenge to the board’s regulations. An administrative proceeding is not the proper forum for challenges to the validity of regulations based on this constitutional challenge. Rulings on the facial validity of a statute or regulation are generally for the courts to make.³⁶ The administrative law judge does not have authority to invalidate a statute or regulation as violating substantive due process. Mr. Squires has the option to raise these challenges in superior court,³⁷ but 12 AAC 36.090(a) must be presumed valid in this case.³⁸

8. Relationship of Experience Licensing Criterion to Professional Competence – The third due process argument Mr. Squires raises is that the board denied him due process because the experience verification licensing criterion on its face is not rationally related to the goal of maintaining professional competence. As noted in the preceding section, this is not the proper forum for this constitutional challenge to the regulation.

9. Equal Protection Argument – In seeking to invalidate the waiver provision at 12 AAC 36.090(a), Mr. Squires argues that the board’s treatment of Mr. Squires discriminates against him in violation of equal protection of law through imposing on him a more onerous waiver option from the FE exam requirement than that applied to others. He supports his argument by testifying from his knowledge about less rigorous licensing requirements for engineers in other states and in Canada.

Alaska’s Board of Architects, Engineers and Land Surveyors has authority to set its own licensing requirements, and it is not bound by any licensing requirements in jurisdictions outside the state. Even licensing by comity with another jurisdiction is a matter for the exercise of board discretion under AS 08.48.191(b).

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³⁶ See Califano v. Sanders, 430 U.S. 99, 109 (1977). See also Treacy v. Municipality of Anchorage, 914 P.2d 352, 270, n. 90 (Alaska 2004) (citing Califano for the proposition that “the hearing officer could not properly have ruled on the constitutionality of the ordinance”); United States v. RCA Communications, Inc., 597 P.2d 489, 507 (Alaska 1979) (“Evaluations of constitutionality . . . are within the special expertise of the courts”); K. Davis and R. Pierce, II Administrative Law Treatise, § 15.5, p. 331 (3rd ed. 1994). Cf. McGhee v. State of Alaska, 951 P.2d 1215, 1218 n. 3 (Alaska 1998) (DMV hearing officers are not empowered to rule on constitutional challenges to facially valid Alaska judgments).

³⁷ See Diedrich v. City of Ketchikan, 805 P.2d 362, 365-66 (Alaska 1991); Appellate Rule 602(a)(2). See also Renwick v. State of Alaska, 971 P.2d 631, 634-35 (exhaustion of administrative remedies required before declaratory action).

³⁸ See AS 44.62.100 (presumptions from filing of regulation).

Moreover, invalidating a law on its face based on equal protection grounds, as with a substantive due process challenge, is a matter for the courts. For the reasons previously discussed with regard to due process, the administrative law judge must presume that 12 AAC 36.090 is valid.

IV. Conclusion

Mr. Squires's application for waiver of the fundamentals of engineering exam is denied.

DATED this 21st day of January, 2006. A

By: _____
David G. Stebing
Administrative Law Judge

Adoption

The board having reviewed the Decision and Order by the administrative law judge in: The Matter of **John Squires**, OAH Case No. 05-0198-AEL, hereby adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of May, 2006. /

By: _____
Signature
KENNETH D. MAYNARD
Name
BOARD CHAIR
Title

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Non-Adoption Options

1. The board declines to adopt this Decision and Order, and instead orders that the case be returned to the administrative law judge to

- take additional evidence about _____;
- make additional findings about _____;
- conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2006.

By: _____

Signature

Name

Title

2. The board revises the Decision and Order as follows:

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Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 2006.

By: _____

Signature

Name

Title

3. The board rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 2006.

By: _____
Signature

Name

Title

4. The board rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 2006.

By: _____
Signature

Name

Title



State of Alaska
Department of Commerce, Community, and Economic Development
Division of Occupational Licensing
Board of Registration for Architects, Engineers and Land Surveyors
333 Willoughby Avenue, 9th Floor, State Office Building
P.O. Box 110806, Juneau, Alaska 99811-0806
A - K (907) 465-2540 L - Z (907) 465-2691
E-mail: license@commerce.state.ak.us

APPLICANT INSTRUCTIONS FOR ENGINEERS AND LAND SURVEYORS REGISTRATION BY EXAMINATION OR COMITY

PLEASE READ THE APPLICATION, STATUTES, REGULATIONS, AND THESE INSTRUCTIONS BEFORE COMPLETING YOUR APPLICATION.

APPLICATIONS WILL BE PROCESSED according to the date received. The board meets four times a year, usually in February, May, August, and November. Written notification of action taken by the board will be mailed approximately three weeks after the board meeting. All documents received prior to receipt of application will be held up to one year and matched with an application upon receipt.

THE APPLICATIONS are updated frequently. If you obtained this application other than directly from the Division or its official website, the application may be outdated. please check the website for the latest version. (<http://www.commerce.state.ak.us/occ/pael.htm>)

A DENIAL OF AN APPLICATION for licensure may be reported to any person; professional licensing board; federal, state, or local government agency; other entity making a relevant inquiry; or as may be required by law.

ALASKA REGISTERS INDIVIDUALS BY EXAMINATION OR COMITY for the following professions: Land Surveying; Professional Engineering in only the following disciplines: Civil, Chemical, Electrical, Mechanical, Mining, and Petroleum. Applicants registered in other branches of engineering must apply and qualify for the branch cited above which is most closely associated with their specialty.

ALASKA DOES NOT HAVE RECIPROCITY (WRITTEN AGREEMENT) WITH ANY OTHER STATE OR COUNTRY. Comity **MAY** be granted to professional registrants from other states, territories, and foreign countries at the discretion of the board and in compliance with statutes and regulations. (12 AAC 36.105 and .107 by authority of AS 08.48)

COMITY IS NOT GRANTED to applicants who have not been registered by fundamental and professional examination regardless of registration(s) held in another licensing jurisdiction or years of professional work experience. However, the Fundamentals of Engineering Exam may be waived by verified work experience (see 12 AAC 36.090). Comity applicants must submit work verification forms or letters of reference - see 12 AAC 36.105(c) or 12 AAC 36.107(c).

APPLICANTS are required to have all examinations and required work experience verified by a third party using Alaska forms, and mailed directly to the Alaska board office. NCEES Council Records may be accepted for verification of education, examinations, and current registration. The board requires supplemental documentation in support of the NCEES Council Records. COPIES of another state's application, work experience, or any other type of verification forms will NOT be accepted.

FEES

The application fee required is the nonrefundable fee in effect on the date the application is received by the Division of Occupational Licensing. The exam fee and license fee which are in effect on the date of exam or date of initial licensure are the required fees. *In the event exam or license fees change after you have applied, the amount due will be recalculated based on the fees in effect at the time of exam or licensure.

EXAMINATION APPLICATION DEADLINE

The application forms and fees must be received by the Division of Occupational Licensing's Juneau office by the deadline date, which is 90 days before the date of the examination for which you are applying (see 12 AAC 36.050). (Refer to examination schedule enclosed with this application.) **(THE COMPLETED APPLICATION MUST BE TYPED AND NOTARIZED.)** Supporting documents must be received within 10 days before the next scheduled board meeting.

COMITY APPLICATION DEADLINE

All comity applications and all supporting documents, i.e., work experience verifications, official transcripts, verification of registration and examination must be received in the Juneau office no later than 10 days before the date of the next scheduled board meeting. Contact the Division of Occupational Licensing for meeting dates, or check the web site at: <http://www.commerce.state.ak.us/occ/pael.htm>

REFERENCES

List five references, three of whom must be engineers for engineering registration or land surveyors for land surveying registration, having personal knowledge of your engineering or land surveying education, training, or experience. References may be contacted by the board for additional information. You must provide registration numbers for the references who are engineers or land surveyors (AS 08.48.201(a)(3)).

REGISTRATION AND EXAMINATION VERIFICATIONS

ALL PROFESSIONAL EXAMINATIONS MUST BE VERIFIED BY A REGISTRATION BOARD OR BY NCEES COUNCIL RECORD. Please forward enclosed registration and examination request form(s) to the state in which your original registration was issued or where you took examinations, and to a state board where you hold a current registration. Some boards require a fee for this service and most boards require that you enclose a stamped, preaddressed envelope (use the Alaska board address) along with your verification form(s) and request. **IF THE FUNDAMENTALS OF ENGINEERING OR LAND SURVEYING EXAM WAS TAKEN IN ALASKA, YOU DO NOT NEED TO COMPLETE OR SEND THE VERIFICATION FORM, BUT YOU MUST LIST THE NAME AND YEAR OF EXAM.**

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JAN 30 2006

DIVISION OF
OCCUPATIONAL LICENSING
Appendix
JUNE 2005
Page 1 of 2

SPECIAL EXAM NEEDS

Programs under the jurisdiction of the Division of Occupational Licensing are administered in accordance with the Americans with Disabilities Act. The special accommodation request will be considered in conjunction with the policies of the National Council of Examiners for Engineers and Surveyors. Examinees must complete the Questionnaire for NCEES Examination Applicants Requesting Test Accommodations (PDF) and return it to ELSEs by the registration deadline. You must submit the documentation to ELSEs on or before their stated deadline in order for you to receive accommodations. This form is found on the ELSEs web site: <http://www.els-examreg.org/>

If you are taking the AKLS, you must have a licensed professional complete and submit directly to the board the "Application for Examination Accommodations for Candidates with Disabilities," Form 08-4214, available from the Division web page: <http://www.commerce.state.ak.us/occ/home.htm>

EDUCATION

OFFICIAL TRANSCRIPTS ARE REQUIRED OF EXAM AND COMITY APPLICANTS. If comity applicants have an NCEES council record submitted, the board will accept the transcripts from NCEES. Otherwise, official transcripts must be requested by the applicant and sent directly by the college registrar's office to the Alaska board address. Photocopies of transcripts marked "student copies" will not be accepted.

An applicant with a foreign degree must submit a transcript and if the transcript is not in English, submit a translation into English and a signed and notarized affidavit of the accuracy of the translation; an applicant must also submit an evaluation of the education from an agency approved by the board unless the education was earned at a school accredited by an accreditation agency recognized by the board.

ARCTIC ENGINEERING REQUIREMENT

ALL ENGINEER APPLICANTS must successfully complete a board-approved arctic engineering course (listed on web page <http://www.commerce.state.ak.us/occ/pub/baac.pdf>). You may submit your application PRIOR to completion of the course to expedite the application process. If you have already completed the course, indicate that information on the application (12 AAC 36.110(a)).

STATEMENT OF EXPERIENCE

List job title, type of work and/or project(s), name and address of employer or supervisor, and list professional, subprofessional, or other experience by the number of months worked in those categories. Indicate number of months in each. Months for responsible charge experience are calculated separately and are included within the total months of professional work experience column. Refer to the definitions in the enclosed regulations to distinguish between professional, subprofessional, and responsible charge work experience (see 12 AAC 36.990).

WORK EXPERIENCE MUST BE VERIFIED BY EMPLOYERS OR SUPERVISORS USING THE ALASKA WORK EXPERIENCE VERIFICATION FORMS. To expedite the process, you may wish to provide present and previous employers with a stamped envelope with the Alaska board address for their convenience. Applicants must verify months of professional work experience to total the minimum requirements of combined education and work experience as required by exam and comity regulations. The board will not give credit for work experience without the third party verification, even if you have listed the experience. Applicants must have their work experience, including responsible charge, verified by a U.S.-registered engineer in the discipline applied or by a U.S.-registered land surveyor, as appropriate. The board will not review the application until the work experience verifications are received.

RULES OF PROFESSIONAL CONDUCT

Please read the statutes and regulations (AS 08.48 and 12 AAC 36.210) and sign the application where indicated, agreeing to exemplify and abide by these rules.

AFFIDAVIT

Sign your application before a Notary Public or other officer authorized to administer oaths. Applications received without a notarized signature will be returned to the applicant.

SOCIAL SECURITY REQUIREMENT

AS 08.01.060 requires an applicant for an occupational license to provide a United States Social Security Number. Applicants who do not have a social security number must complete the "Request for Exception from Social Security Number Requirement" form located on www.commerce.state.ak.us/occ or contact the division for a copy of the form.

PAYMENT OF CHILD SUPPORT

If the Alaska Commission on Postsecondary Education has determined you are in loan default or if the Alaska Child Support Services Agency has determined you are in arrears on child support, you will be issued a nonrenewable, temporary license valid for 150 days. Contact Postsecondary Education at (888) 441-2961 or (907) 465-6949 or Child Support Services Agency at (800) 478-3300 or (907) 269-6659 to resolve payment issues.

BUSINESS LICENSING

If you are self-employed or are practicing as a partnership, please contact Business Licensing at (907) 465-2550 or access the Internet for an application. The Internet address is: <http://www.commerce.state.ak.us/occ.htm>. If the business is incorporated, contact the division for further instructions.

CORPORATE AUTHORIZATION

Corporations doing architectural, engineering, or land surveying business in Alaska must hold a business license as well as hold corporate authorization with the Board of Registration for Architects, Engineers and Land Surveyors. In addition, corporations must also be registered with the Corporations section of the Division of Occupational Licensing. For more information, you may contact the Division at (907) 465-2530; P.O. Box 110808, Juneau, Alaska 99811-0808; or access their internet home page at <http://www.commerce.state.ak.us/occ>

PUBLIC INFORMATION

Please be aware that all information on this form will be available to the public, unless required to be kept confidential by state or federal law. Current licensee information, including mailing addresses, is available on the Division's website at www.commerce.state.ak.us/occ under "Professional License Search."

INTERNET INFORMATION

Certain forms can be printed by accessing the Division of Occupational Licensing home page at the following address:

<http://www.commerce.state.ak.us/occ/pael.htm> or by following the links from the Alaska state home page at <http://www.state.ak.us>

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DIVISION OF
OCCUPATIONAL LICENSING

Appendix
Page 2 of 2

