



STATE OF ARKANSAS

Office of the Attorney General

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Opinion No. 94-059

April 20, 1994

The Honorable Tom Kennedy
Prosecuting Attorney
Fifth Judicial District
107 West Main Street
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This is in response to your request for an opinion, on behalf of Deputy Prosecuting Attorney Gordon W. McCain, Jr., concerning the Arkansas Sewage Disposal Systems Act, codified at A.C.A. §§ 14-236-101 to -118 (1987 and Cum. Supp. 1993), and a procedural guideline of the Division of Sanitarian Services of the Department of Health pertaining to the law.¹ Specifically, you have referenced A.C.A. § 14-236-103(14) (Cum. Supp. 1993), which defines the term "designated representative" as follows:

"Designated representative" means a person designated by the authorized agent to make percolation tests, system designs, and inspections subject to the authorized agent's final approval. Designated representatives shall be registered professional engineers, registered land surveyors, licensed master plumbers, registered sanitarians, or other similarly qualified individuals

¹It is my understanding that the procedural guideline to which you refer in your correspondence is taken from a memorandum drafted by the Sanitarian Services Division of the Department of Health in 1987. The memorandum is entitled "Policy and Procedure Regarding the Certification of Designated Representatives." It is also my understanding that the procedural guidelines contained in this memorandum are routinely used by the county or local sanitarians in certifying "designated representatives."

holding current certificates from the State of Arkansas, and shall demonstrate to the satisfaction of the authorized agent prior to their designation as a designated representative their competency to make percolation tests, designs, and final inspections for individual sewage disposal systems in accordance with the rules and regulations promulgated pursuant to this chapter. [Emphasis added.]²

You have also referenced page 1 of the Division of Sanitarian Services' procedural guideline wherein the following is stated with regard to those individuals who may apply for certification as a "designated representative":

The Sanitarian Supervisor utilizes the following information as a procedural guideline in the certification of Designated Representatives (D.R.) to conduct percolation tests. (Ref. Act 402 of 1977, Section 3, Paragraph N.)

Application for certification is provided to any Registered Professional Engineer, Registered Land Surveyor, Licensed Master Plumber or Registered Sanitarian requesting D.R. status. If adequate coverage for the area cannot be provided by the preceding professional groups, other similarly qualified individuals, such as soil classifiers, soil scientists, Soil Conservation Service field personnel, etc., may be provided opportunity to apply after instruction and training by the Sanitarian Supervisor. [Emphasis added.]

²The term "authorized agent," as appears in this definition and throughout the chapter pertaining to the Arkansas Sewage Disposal Systems Act, is defined in A.C.A. § 14-236-103(13) (Cum. Supp. 1993) to mean "the sanitarian assigned to the county or local area by the Division of Sanitarian Services of the Department of Health."

In your correspondence, you note that in Franklin County adequate coverage for the area cannot be provided by any of the professional groups listed in the foregoing provisions. With regard to this matter, you have asked for an opinion on the following questions, which I have restated in part:

1. Are you aware of a definition of the term "similarly qualified," as appears in A.C.A. § 14-236-103(14) (Cum. Supp. 1993) and in the procedural guidelines of the Division of Sanitarian Services?

2. Would an individual who holds a Class B water plant operators license and a Class B plumbing inspectors license fall into the "similarly qualified" category so that he could apply for certification as a "designated representative"?

With regard to your first question, I find no definition of the term "similarly qualified" in the Arkansas Sewage Disposal Systems Act. Neither do I find a definition of the term in the rules and regulations of the Sanitarian Services Division of the Department of Health implementing the act. As a general matter, however, the word "similar" has been defined to mean nearly corresponding, resembling in many respects, somewhat alike, or having a general likeness. Thompson v. Commissioner of Internal Revenue, 203 F.2d 820, 825 (4th Cir. 1953). See also Arkansas State Highway Comm'n v. Witkowski, 236 Ark. 66, 69, 364 S.W.2d 309 (1963) (stating that "[t]here can be no fixed definition of similarity or comparability. Similarity does not mean identical, however it does require some reasonable resemblance.") While I find no definition of the term "similarly qualified," as used in the context at issue here, the term in my opinion probably refers to those individuals who are engaged in occupations which require many of the same qualifications as the professions outlined in A.C.A. § 14-236-103(14) and which require certificates or licenses from the State of Arkansas. See A.C.A. § 14-236-103(14) (stating "similarly qualified individuals holding current certificates from the State of Arkansas"). Additionally, the Division of Sanitarian Services, in their procedural guideline on the certification of "designated representatives," has somewhat interpreted the term by listing occupations which might be characterized as "similarly qualified." See procedural guideline contained in 1987 memorandum of the Division of Sanitarian Services (stating "other similarly qualified individuals, such as soil classifiers, soil scientists, Soil Conservation Service field

personnel, etc.") Thus, in the absence of a specific definition of the term, it appears that the determination of whether a particular individual is "similarly qualified" within the context of A.C.A. § 14-236-103(14) will be a fact question for the Sanitarian Services Division or its "authorized agents." See generally A.C.A. § 14-236-107(a) (1987) (providing that the Division of Sanitarian Services of the Department of Health or its authorized agents is responsible for the administration of the Arkansas Sewage Disposal Systems Act and of the rules and regulations adopted pursuant to the act).

With regard to your second question, the determination of whether the particular individual you describe will fall within the "similarly qualified" category will, as stated above, be a fact question for the Sanitarian Services Division or its "authorized agents."

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Nancy A. Hall.

Sincerely,


WINSTON BRYANT
Attorney General

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