



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 2, 1977

ATTORNEY GENERAL OPINION NO. 77-373

Mr. Dan E. Turner
Topeka City Attorney
City Building
Topeka, Kansas 66603

RE: Engineers - Professional Engineers' License
Act - Practice of Engineering

Synopsis: The preparation by the Topeka City Engineer of specifications and interior design of a pre-engineered metal building does not constitute the unauthorized practice of architecture, but rather, is architectural work incidental to the practice of engineering and permissible under K.S.A. 1976 Supp. 26a-102(c).

Dear Mr. Turner:

You have requested our opinion on three separate questions involving the technical professions of architecture and engineering. First, you inquire concerning the powers and duties of the Topeka building inspection department with respect to the requirement that building plans, other than those in categories specifically exempted by law, bear the seal of a licensed architect. This requirement is actually part of the Uniform Building Code, adopted as the Building Code of the City of Topeka and incorporated into the ordinances of the City of Topeka by reference in the Code of the City of Topeka, 1975, Section 8-201 UBC Section 301(c) provides in part:

The building official may require plans and specifications to be prepared and designed by an engineer or architect licensed by the state to practice as such.

The use of the word "may" makes the imposition of this requirement discretionary with the building inspection department; in actual practice, the seal of an architect or engineer is required on plans submitted to the department, unless they fall within the various exceptions provided by state law.

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The technical professions of engineering, architecture, landscape architecture, and land surveying are licensed and controlled through the Kansas State Board of Technical Professions. (See K.S.A. 1976 Supp. 74-7001 et seq.) The requirements for licensure and practice of engineers and architects are found in K.S.A. 26a-102 et seq. and K.S.A. 6-102 et seq., respectively. The law requires that, with certain exceptions, anyone practicing or offering to practice architecture be licensed. In determining whether or not the particular work is of a nature required by state law to be performed by a licensed professional, the building inspection department may from time to time have difficulty in determining which profession is involved or whether the particular activity is regulated. Questions of this nature may properly be referred to the State Board of Technical Professions, which has the statutory power to discipline architects and engineers and investigate complaints of unlawful practice. (See K.S.A. 1976 Supp. 26a-108 and 119; 6-116 and 118.)

You have also inquired whether the city engineer may lawfully seal the plans and specifications for the Animal Health Center at the Topeka Zoo. This structure is to be a pre-engineered metal building, for which the city engineer prepared specifications and also designed the interior. Consulting engineers performed the electrical and mechanical design work.

This question has been discussed at length with the State Board of Technical Professions and the opinion of the Board is that preparatory specifications for pre-engineered metal buildings is an ambiguous area which involves neither clearly architectural nor clearly engineering service. There is no doubt that such work may legally be done by an architect. However, it has been the practice for engineers to perform such work if requested. K.S.A. 1976 Supp. 26a-102(c) defines the term "practice of engineering" to include "such architectural work as is incidental to the practice of engineering." It is the strong feeling of the Board that this work falls within that definition and is permitted to licensed engineers. I see no reason to disagree with these experts in the fields of architecture and engineering. As to the interior design performed by the city engineer, I concur with the opinion of the Board that this work was of the type generally performed by interior designers, that is, design of interior components not changing or affecting the structure of the building. Thus, it is my conclusion that the Topeka city engineer was not engaged in unlawful practice of architecture in this situation, and that his seal on the plans is sufficient to satisfy the requirement of the Department of Building Inspection that plans be sealed by a licensed professional architect or engineer.

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Your inquiry raises one final question - whether the professional licensure requirement may be avoided by contractors who submit plans which they have prepared but for which they claim to be receiving no compensation. K.S.A. 1976 Supp. 6-102(b) defines the "practice of architecture" as "...the rendering of service for compensation by consultation, planning, or designing of buildings or the responsible administration of construction projects. "In my judgment, the lack of a specific charge by the contractor to the client for the plans is not determinative of a lack of compensation. An examination of the numerous definitions of "compensation" to be found in Black's Law Dictionary (West Publishing Co., 1966) reveals that "compensation" does not necessarily refer to payment in money; for instance, one definition is "recompense in value". (Emphasis supplied.) Another is "that return which is given for something else;" still another is "giving back and equivalent in either money which is but the measure of value, or in actual value otherwise conferred."

Thus, the award of a contract to construct the building may be ample compensation for the preparation of building plans. In many instances, but for the opportunity to build the building, a contractor would not furnish plans to the owner. It is therefore my opinion that the lack of a monetary compensation awarded solely for preparation of the plans is not necessarily in and of itself sufficient to exempt the contractor from the operation of the architect licensure laws.

To summarize, I have reached the following conclusions in response to your inquiry:

- (1) The Topeka building inspection department may enforce the requirement that plans bear the seal of a licensed architect. Questions dealing with the application of the licensure laws should be referred to the Kansas State Board of Technical Professions.
- (2) The preparation by the Topeka city engineer of specifications and interior design of a pre-engineered metal building does not constitute the unauthorized practice of architecture, but rather, is architectural work incidental to the practice of engineering, and permissible under K.S.A. 1976 Supp. 26a-102(c).

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- (3) The mere fact that the client has not been charged specifically for building plans does not in and of itself exempt the contractor preparing them from the operation of the architect licensing laws.

Very truly yours,


CURT T. SCHNEIDER
ATTORNEY GENERAL

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