

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

June 16, 1978

ATTORNEY GENERAL OPINION NO. 78- 203

Mr. James W. Bibb
Director of the Budget
Department of Administration
1st Floor - State Capitol
Topeka, Kansas 66612

Re: Architectural Services--Contracts--Compensation

Synopsis: Where the architectural negotiating committee has negotiated a contract with an associate architect to provide schematic drawing and services, working drawing and construction administration services, and it is proposed to renegotiate that contract only insofar as it concerns compensation to be paid for additional construction administration services, the additional compensation which may be paid therefor is subject only to the maximum limit prescribed by K.S.A. 75-5410, and is not limited to only twenty percent of either the maximum allowable compensation or of the negotiated contract fee.

* * *

Dear Mr. Bibb:

You advise that the architectural negotiating committee for the selection of an architect for a parking structure for GSP and Corbin Halls at the University of Kansas negotiated a contract with the architectural firm of Skidmore and DeVore of Ottawa. The estimated construction cost of the parking structure was \$386,400. Because of the relatively small size of the project, the committee chose to negotiate on the basis of a percentage of construction costs. It was agreed that full services as then outlined in the Architectural Selection Manual would be provided

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at a rate of 5.6 percent of awarded construction. At the time the contract was awarded, it was anticipated that a full-time state inspector would be on the job, and that the construction administration services from the firm of Skidmore and DeVore would be limited to less than the full responsibility for the construction administration phase. This contract was let prior to the opinion of this office indicating that the committee could not negotiate for partial construction administration. The negotiated amount was substantially below the maximum fee of seven percent permitted by the act because it was the view of the committee that the structure was not a project of maximum complexity.

Bids were received May 16, 1978, and contracts were awarded in the amount of \$371,851. The actual fee as negotiated thus equals \$20,823.60. It is difficult to determine the amount of the fee which is attributable to construction administration services. The portion of the fee so attributable was not identified in the contract negotiations, but it was the understanding of the committee and the firm that construction administration would be conducted in accordance with the manual then in effect, i.e., less than complete responsibility for the project.

On Tuesday, June 6, 1978, the committee met with the firm of Skidmore and DeVore for the purpose of negotiating an amendment to the contract to incorporate new instructions regarding construction administration, as a result of our opinion. The firm requested an additional \$3,800 for their additional services in construction administration, pointing out that under the new interpretation, they were assuming a much greater responsibility than had been envisioned in the original contract. The committee agrees that, in fact, the construction administration responsibilities which the firm is required to assume do exceed those which were anticipated when the contract was executed. You advise that, in fact, the contract came in under the estimate, and as a result, the architects' fee has dropped from what the 5.6 per cent had been expected to yield, i.e., \$21,638, to \$20,823.60 for which they would be eligible under the existing contract.

The question arises concerning the proper interpretation of K.S.A. 75-5410(a), which provides in pertinent part thus:

- "(a) Fees paid to firms employed as associate architect to provide architectural services shall not exceed the following:
- (1) When the firm provides schematic drawing and services, working drawing, and

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and the construction administration services specified in K.S.A. 75-5408: Seven percent (7%) of that portion of the cost of the building not exceeding one million dollars (\$1,000,000)

. . . .
(2) When the director of architectural services provides schematic design services and the associate architect provides working drawings and construction administration services, the maximum established under (1) above shall be reduced by fifteen percent (15%).

(3) When the director of architectural services provides schematic design services and construction administration services as provided in K.S.A. 75-5409, the maximum established under (1) above shall be reduced by thirty-five percent (35%)."

Subparagraphs (2) and (3), *supra*, provide for a reduction of the maximum fee payable under (1) by specific percentages, based upon the portion of services provided by the director of architectural services. *E.g.*, if the director provides schematic design services and the associate architect provides working drawings and construction administration services, the maximum is reduced by 15 percent. Thus, it may be argued that schematic design services are apportioned 15 percent of the maximum fee under the act. Subparagraph (3) provides that if the associate architect provides only working drawings, and the director provides schematic design and construction administration services, the maximum fee shall be reduced by 35%, suggesting that 65 percent of the maximum fee is attributable to working drawings, 20 percent to construction administration, and 15 percent to schematic design services. There is no such "break out" of the costs of these three respective services in (1), which fixes a maximum of seven percent applicable to this particular project.

Where an associate architect has contracted to provide all three services, *i.e.*, schematic drawings and services, working drawings and construction administration services, and it is proposed to renegotiate the fee paid to the associate architect only insofar as it is attributable to one of those services, here construction administration, the question is raised whether, in negotiating an additional fee to be paid solely for additional construction services, the committee may agree to pay any amount which it deems appropriate for those additional services subject only to

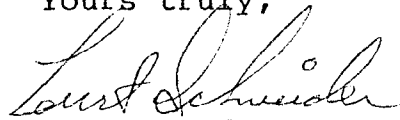
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the maximum limitation established by (1), i.e., seven percent, or whether the additional compensation for that single service, here additional construction administration services, is limited to a maximum of twenty percent of the maximum fee of seven percent or, perhaps, of the total negotiated amount.

In my judgment, in these circumstances the committee may negotiate additional compensation to be paid for construction administration subject only to the maximum limitation fixed by (1), here seven percent of the cost of the project. Subparagraphs (2) and (3) apply by their terms only when the director of architectural services is to provide either schematic design services only, or schematic design services and construction administration services, and the associate architect is to provide the remaining architectural services. In subparagraph (1), the legislature set forth the maximum limits to be paid to associate architects who provide all architectural services, i.e., schematic drawing and services, working drawings and construction administration services. That limitation as applied to this project is seven percent of the cost of the project. In negotiating a contract under (1) and in computing the fee allowable thereunder, there is no occasion under (1) to "break out" that fee based upon the different services provided, and to apportion given percentages of the negotiated or maximum fee to each of the three kinds of services. Similarly, in my judgment, there is no occasion to do so in renegotiating a contract thereunder. The argument that construction administration services may account for no more than 20 percent of either the maximum allowable fee or of the negotiated fee when it is less than the maximum allowable fee is just that, an argument based on inference which has no support in the explicit language of subparagraph (1).

Accordingly, in my judgment, in renegotiating the contract with Skidmore and DeVore to provide additional compensation for additional construction administration services, the committee may negotiate the payment of an additional amount which it deems appropriate, so long as the total amount paid to the associate architect for the project does not exceed seven percent of the cost of the project.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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