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ATTORNEY GENERAL OPINION NO. 90- 98

The Honorable Larry F. Turnquist
State Representative, Sixty-Ninth District
815 Hanson Hollow
Salina, Kansas 67401-4866

Re: State Boards, Commissions and Authorities--State
Board of Technical Professions--Architecture;
Exemptions from Requirements for Licensure or
Certification; Definitions

Synopsis: K.S.A. 74-7031 does not per se require the
assistance of an architect when installing a door
in a precast concrete building. Whether these
circumstances require the assistance of an
architect depends on a factual determination made
by the fact-finding body from whom a building
permit is sought. Cited herein: K.S.A. 74-7003;
74-7031; 74-7033.

* * *

Dear Representative Turnquist:

As representative for the sixty-ninth district you inquire
whether K.S.A. 74-7031, dealing with the licensure of
architects, prohibits a local builder from installing a new
door opening in a precast concrete building without the
assistance of an engineer or architect.

You indicate that a local builder wants to install a new door
opening in a precast concrete building. Local city officials
have informed him that K.S.A. 74-7031 requires he obtain the
assistance of an architect or engineer before he can obtain a

building permit because in the officials' judgment the proposed change affects the structural system or structural integrity of the building.

In our opinion this factual determination was not based on K.S.A. 74-7031 alone. This statute does not per se make the installation of a door in a precast concrete building illegal unless done with the assistance of an architect. An analysis of the statute is in order.

K.S.A. 74-7003 defines the practice of architecture and engineering and requires that one be licensed before performing such services, unless those services are exempted by K.S.A. 74-7031 (architects) and K.S.A. 74-7033 (engineers).

In pertinent part K.S.A. 74-7031 states:

"The provisions of this act requiring licensure . . . [or certification under K.S.A. 74-7036] to engage in the practice of architecture shall not be construed to prevent or to affect:

"(c) Persons furnishing, individually or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data concerning the labor and materials to be used for any of the following:

"(1) Store fronts or facades, interior alterations or additions, fixtures, cabinet work, furniture, appliances or other equipment;

"(2) work necessary to provide for installation of any item designated in (1) above;

"(3) alterations or additions to a building necessary to or attendant upon installation of any item designated in (1) above, if the alteration or addition does not change or affect the structural system of the building." (Emphasis added).

A building for purposes of this section is defined as

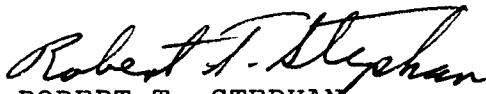
"[A]ny structure consisting of foundation, floors, walls, columns, girders, beams and roof, or a combination of any number of these parts, with or without other parts and appurtenances thereto, including the structural, mechanical and electrical systems utility services, and other facilities as may be required for said structure. K.S.A. 74-7031, subsection (g).

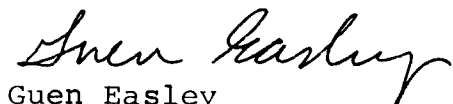
Applying the terms of this statute to the question at hand requires one step in between. Local officials concluded that installing an opening in this particular building affected the structural system of the building. However this determination was made not by applying the statute in question but rather by considering plans, diagrams and specifications regarding the load-bearing capacity of the wall where the door opening was to be made. See sec. 302(b) of the 1988 Uniform Building Code and the City of Salina Building Code. Thus, whether installing a door in a precast concrete building comes within an exemption to the practice of architecture requires that a factual determination be made by the fact-finding body to whom application for a building permit is made. The proper remedy for a wrong factual determination lies not with a legal interpretation of the statute but with the building code advisory appeals board of the city.

The clear intent of K.S.A. 74-7001 et seq. and specifically 74-7031 is to promote public safety by making sure that responsibility for construction affecting the structural integrity of a building (to be occupied by the public generally) lie with one whose training and education ensures sound construction judgments.

In conclusion we opine that K.S.A. 74-7031 does not per se require the assistance of an architect when installing a door in a precast concrete building. Whether these circumstances require the assistance of an architect depends on a factual determination made by the fact-finding body from whom a building permit is sought.

Very truly yours,


ROBERT T. STEPHAN
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